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## **Weakening trade union power: New forms of employment relations.**

### **The case of Norwegian air shuttle**

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#### *Summary*

For the past two decades – and in particular after the 2008 crisis – atypical employment has expanded across Europe. The crisis led to increased demand for more flexible labour markets, and thus atypical employment became an important tool for employment, competitiveness and economic growth. However, recent research reveals that employers are using atypical employment not just to compensate for unstable markets, but also as an opportunity to cut costs by bypassing collective agreements and to discipline workers, works councils and unions. The case study presented in this article corroborates these findings, arguing that employers – in addition to reducing costs – are making use of atypical employment to weaken organised labour as a goal in its own right. Whether such behaviour forms part of a larger drive to resist unions needs to be further researched. In any event, atypical employment represents an increasing challenge to trade unions across Europe.

#### **Introduction**

This article focuses on two challenges facing labour in Europe: the increasing use of new forms of employment classified as atypical employment, and the weakening of the political and bargaining position of unions. Atypical employment – defined as fixed-term work, part-time work, temporary agency work or self-employment – has increased in most European countries, including coordinated market economies with a high degree of employment protection and labour market regulation. Eurostat (2014) indicates that more than one-third of European employees are now in atypical employment (see Buschoff, 2015). These two challenges are often treated separately, but there is a need to see them as interrelated because atypical employment, for different reasons, undermines unionisation and weakens unions' societal position.

It is acknowledged that different forms of atypical employment have had an impact on trade union density, as seen for example in the problems of organising temporary workers (Gumbrell-McCormick, 2011). But as atypical employment was long considered mainly to

affect marginal groups in the labour market, it was not seen as a major societal issue (Holst, 2011). Another circumstance blurring the relationship between atypical work and organised labour is the way it is conceived politically. Meeting business requirements for flexibility, atypical work has more and more become a policy tool for employment, competitiveness and economic growth. Accordingly, governments have encouraged the use of atypical work, resulting in its remarkable increase across Europe since the 2008 crisis (Heyes and Lewis, 2014).

However, recent studies show that the relationship between new forms of employment and labour relations has become more varied. Recent developments show that employers are using atypical employment not only as a means to compensate for market fluctuations, but also to cut costs. With increased cost competition, wages have become increasingly targeted, with the relaxation of rules governing atypical employment providing employers with opportunities unilaterally to redefine working conditions and drive wages down (see Wagner and Hassel, 2016).

As Holst (2014) points out, by pitting permanent workers against temporary ones, firms can discipline workers and subjugate collective bargaining to drive wages down. Additionally, by using atypical employment as a strategic tool, firms can evade sectoral agreements or renegotiate company agreements, and circumvent information and consultation rights, co-determination and labour law provisions such as dismissal protection and paid sick leave. As also shown by other studies (De Stefano, 2009), new forms of employment can thus increase managerial prerogatives at the expense of workers' rights and trade unions' political and bargaining power. To the extent that new forms of employment practices are used as means to lower wages, reduce job security and downgrade working conditions, they constitute a challenge to the political and bargaining position of unions.

Revealing firms' use and hence the extent of new employment practices is challenging, as this type of strategic behaviour is not directly observable. Both aggregated and individual data are needed to investigate intra-company diversity and employment policies. A micro-level analysis can inform us about such mechanisms, as it allows us to examine how and for what purposes firms make use of atypical employment. This article contributes to this issue by means of a case study. The case company in question is a low-cost carrier, Norwegian Air Shuttle (NAS). The airline industry has become an important point of reference for how employment is being reshaped. As a mobile industry, airlines can easily switch operations between different regulatory regimes (Bamber et al., 2009). In pace with the growth of low-cost carriers in Europe, wages and working conditions in the airline industry have

deteriorated in a race to the bottom (Harvey and Turnbull, 2013; Bamber et al., 2009; Hunter, 2006; Pate and Beaumont, 2006).

NAS is a case in point, as it recently changed its employment policies from standard to atypical employment. The case is also relevant as the company is embedded in a country characterised by a high level of employment protection, strong trade unions and resilient labour institutions. In this perspective, the case study contributes to the call for a closer evaluation of the relationship between institutions and company employment practices, as these 'have tended to be of a broad-brush stroke nature, often founded on macro-data' (Wilkinson et al., 2014).

The case study analysis here corroborates previous research stressing the use of new forms of employment as a means to cut costs. It also supports the perspective that firms embedded in institutional contexts with a high level of employment protection have a stronger incentive to make use of atypical employment than those embedded in contexts with less regulation (see Gumbrell-McCormick, 2011). However, the case study analysis also reveals that atypical employment in combination with other types of employer strategies is used deliberately to weaken organised labour as a goal in its own right, with the aim of increasing managerial prerogatives.

As changes in employment practices and relations must be seen in relation to political-legal reforms at both EU and national level, the following section outlines labour law reforms and changing politics before the case study analysis, discussion and conclusion.

## **Liberalisation, labour law reforms, and atypical employment**

### *Labour law reforms and changing policies*

Since the 1980s, social partnership in the European Union and its Member States has undergone significant changes: union density has dropped significantly; collective bargaining coverage is decreasing; and a growing number of workplaces no longer enjoy co-determination. Literature points to different societal phenomena accounting for this transformation, including the shift from manufacturing to services, globalisation, legal-political reforms, atypical employment and the introduction of HR regimes. While the uneven spread of changes must be explained within the context of national institutions, a review of 25 countries shows a weakening of employment relations institutions in all of them (Avdagic and Baccaro, 2014). Recent reforms within the EU include the relaxation of employment protection and the liberalisation of various forms of atypical employment carried out by most EU Member States (Clauwaert and Schömann, 2014).<sup>1</sup>

Most studies agree that reforms have not occurred as one major radical break with established labour law and labour relations, but in the form of a succession of minor reforms (Doellgast et al., 2009; Heyes and Lewis, 2014; Holst, 2014; Howell and Givan, 2011; Wagner and Hassel, 2016). However, several studies point to the finance and eurozone crises as a turn against labour (Buschoff, 2015; Lehndorff, 2014; Heyes and Lewis, 2014; Stan et al., 2015). To boost economic growth and improve competitiveness, the European Commission has taken active steps substantially to reduce collective bargaining and to downgrade employment protection, based on the view that industrial relations institutions prevent the proper functioning of markets and thus obstruct economic growth (Drahokoupil and Myant, 2015; Lehndorff, 2014). As a result, several countries introduced fundamental changes to their industrial relations structures and processes. One key strategy was the decentralisation of bargaining, with company agreements taking precedence over national or sector agreements (Clauwaert and Schömann, 2014; Lehndorff, 2014). Simultaneously, governments encouraged greater use of atypical contracts. It is a widespread belief that temporary work facilitates employment growth by providing firms with sufficient flexibility to adapt to market changes. For this reason, the use of atypical employment became an important policy tool in fighting the effects of the financial crisis (Heyes and Lewis, 2014). However, some studies see these reforms as something more than just ways of overcoming the financial and eurozone crises. On the one hand, they are seen to be processes for reducing the wage-setting power of trade unions as well as their power and legitimacy (Drahokoupil and Myant, 2015; Lehndorff, 2014). On the other hand, the reforms are considered as key ingredients in a new economic governance regime, with more authoritarian policy intervention incorporating parts of the neoliberal programme well-grounded in the Union's marketisation project (see Crouch, 2014). In Lehndorff's (2014) wording, 'the Great Recession gave way to a Great Aggression against trade unions'. Outcomes include a radical decline in collective agreement coverage and the dismantling of collective bargaining in the European periphery through the intervention of the Troika (Stan et al., 2015). For this reason, the labour reforms are deemed to be detrimental to the world of labour in Europe in the long term (Clauwaert and Schömann, 2014; Drahokoupil and Myant, 2015; Lehndorff, 2014).

### *Employers' attitudes*

Brown et al. (2009) take another approach in explaining the decline in union density: employers' changed approaches. This is to be seen in relation to intensified competition. In a changing environment, companies no longer see the benefits of collective bargaining, instead

viewing it as a constraint to the framing of working conditions and hampering decision-making. From this perspective, collective bargaining is increasingly perceived as a cost-generating mechanism.

In the same vein, some researchers see organised labour being challenged by new management policies in the form of human resource management (HRM). HRM policies are designed to promote employee commitment through direct communication between managers and employees. As a result, HRM is replacing workplace representation and to a large extent substituting trade unions. Waddington (2014) sees this as a shift away from collectivism to individualism. From this angle, management has become a strong proponent of decentralised bargaining. Some, like Sisson (2010: 283), thus consider the decline in union density not as a consequence of active and aggressive acts of de-recognition, but as a process of 'withering on the vine'.

In contrast to these views, recent studies reveal that employers can take deliberate steps to restrain the power and influence of trade unions. Holst's (2014) investigation of German labour relations shows that employers deploy different strategies to put pressure on union representatives, i.e. outsourcing or the use of temporary agency work. Either way serves as a means to discipline and subjugate unions in collective bargaining processes. By pitting core workforces against peripheral workforces, atypical employment is used to gain concessions from core workers. By outsourcing activities to agencies, companies can also easily bypass dismissal protection, paid sick leave and binding labour relations by delegating obligations to other firms (Holst, 2014). Agency work implies a tripartite relationship in which the employee is legally decoupled from the real employer, and in which the employment relationship becomes unclear or disguised. In this manner, atypical employment undermines the social partnership.

A separate strand of research shows how internationalisation and the ability to operate on a transnational basis have increased management's room for manoeuvre. By offshoring employment, firms can easily exploit legal loopholes and relocate activities to countries with less regulation: so-called institutional avoidance (Doellgast et al., 2009; Keller and Seifert, 2013). Lillie's (2010) argument is that by moving production or certain activities to other countries, the sovereign regulatory capacities of the state and society are systematically constrained. Unclear delineation of national sovereignty makes institutional avoidance more sophisticated. Within the EU, this dilemma remains unsolved, as there is no clear framework with respect to which national law system is to be applied (see Evju, 2014).

It has been a dominant view that skilled and often highly unionised core workforces continue to benefit from formally stable core institutions (Palier and Thelen, 2010). As indicated above, this is proving to be a misleading perception, as unionised core employees are more vulnerable than previously considered. As the neoliberal programme is increasingly perceived to be a matter of course, managerial prerogatives have been strengthened and are now viewed as the optimal way of organising work. A fresh survey carried out among different employee groups in Norway clearly points in the direction of more autocratic managerial styles, with greater emphasis on managerial prerogatives and less on representation and co-determination (Nordrik and Falkum, 2015).

### **The airline industry, data and case selection**

The airline industry has become an important point of reference for how employment relations are diversifying. The implementation of the Single Market and the EU's liberalisation of civil aviation in 1993 opened up the market for a new type of player, the low-cost carrier (LCC). The low-cost business model proved to be so successful that such carriers have changed the rules of the game for the entire aviation industry, with cut-throat competition creating constant pressure to lower costs industry-wide. As labour is the primary target in LCC cost-cutting strategies, wages and working conditions have deteriorated (Bamber et al., 2009; Harvey and Turnbull, 2013; Hunter, 2006; Pate and Beaumont, 2006). A recent EU-financed report on working conditions for pilots and cabin crews states that non-standard forms of employment are increasingly prevalent within the aviation industry, as reflected by the increasing use of self-employment, fixed-term work, work via temporary work agencies as well as zero-hour contracts and pay-to-fly schemes (Jorens et al., 2015). With regard to unionisation, LCCs vary between compliance and hostility. Ryanair in particular has become notorious for its anti-union policies despite claiming that it supports the right of workers to organise (O'Sullivan and Gunnigle, 2009). Norwegian Air Shuttle has followed in Ryanair's footsteps, changing from a cooperative attitude towards unions to a hostile one. As management was unwilling to be interviewed, the data needed to investigate this issue were collected from different types of sources: the company's annual reports, interviews with different employee groups and trade unions, as well as media items and literature. Interviews and follow-up questions covered a period of more than two years. Since employment relations have become a sensitive topic for the company – management denies its opposition to organised labour or any violation of labour law – and since employees fear sanctions, data from all the interviewees are presented

anonymously. However, due to the company's commercial success over the years, and more recently due to its controversial policies, it is attracting wide media attention and coverage. This state of affairs has produced a wealth of material on the company, including contributions from external observers and public statements from management representatives.

#### *Norwegian air shuttle: a successful player*

NAS is a success story. Established as a low-cost carrier in 2002, within less than a decade it grew to become the third largest low-cost carrier in Europe (after Ryanair and easyJet). Spurred by its success, the company is challenging conventional aviation wisdom by operating long-haul routes based on the low-cost business model. In 2013 it inaugurated new routes between Europe and Bangkok and between Europe and New York. The year before, it concluded a sensational aircraft purchase deal, contracting to buy in all 222 new aircraft from Boeing and Airbus respectively. These contracts were concluded on top of the 42 aircraft already contracted from Boeing in 2007. The company has announced plans to extend its operations to destinations in South-East Asia, Africa and Latin America, and its goal is to become nothing less than a leading global player (Moen, 2016).

One noteworthy element of NAS' low-cost success was its compliance with domestic pay and working conditions: flight crews were comparatively well paid even by national standards and enjoyed relatively good working conditions (Moen, 2016). On a worldwide benchmark, NAS claimed that it paid the second highest salaries in the industry (Norwegian Air Shuttle, 2012). Relationships with trade unions were deemed to be constructive. Collectivism and cooperation, typical of Norwegian industrial relations, characterised the company culture. For instance, pilots in Norway, Denmark and Sweden came under the same collective agreement, as did cabin crews in Denmark and Norway. Employees characterised the relationship between management and employees as based on trust and reciprocal respect. As late as 2011, management itself attributed its position as cost leader to its dedicated and hardworking employees (Moen, 2016; Norwegian Air Shuttle, 2012).

#### **New employment practices and relations**

About the time NAS started its trans-continental operations, it changed its employment policies and practices. First, to cover its expansion, it started recruiting pilots and cabin crews at bases outside Scandinavia (see Table 1), despite the fact that most of its operations took place within these countries. Secondly, the company outsourced the recruitment of employees



to employment agencies.<sup>2</sup> Thirdly, it transferred all its permanent pilots and cabin crews (i.e. pilots in Norway, Denmark and Sweden, and cabin crews in Norway and Denmark) to subsidiaries created specifically for the purpose of employing these groups.

### *Temporary agency work*

When NAS started recruiting pilots and cabin crews at its foreign bases, it stopped its practice of employing people directly, instead resorting to the use of employment agencies and to fixed-term contracts for hiring pilots and cabin crew.<sup>3</sup> As Table 2 shows, the percentage of temporary pilots and cabin crew members rose from almost 31 per cent in 2012 to some 49 per cent in 2013. Typically, its agency workers earn less and enjoy less favourable working conditions. Within the contract period, agency workers are supposed to be engaged on a permanent basis, but if there is no work they receive less or no pay. The agency workers have less favourable work schedules (announced at relatively short notice) and their work intensity is higher, as stated by a flight attendant in Sweden: ‘we can work 15 hours without a break’ (interview). They also have to accept a high degree of flexibility with regard to working time and place of work. Both pilots and cabin crews can be assigned to bases across Europe with a notice of two months. There is information that one pilot was reassigned nine times within a period of two years (interviews).

Moreover, delegating employer obligations to others makes it easy for firms to ignore certain regulations, as there are significant enforcement problems and the employment relationship is blurred. In Spain for instance, the trade union Union Sindical Obrera (USO) is accusing NAS of breaking Spanish law. By spring 2016, according to USO, NAS had violated Spanish law 375 times, in many cases failing to pay social security contributions. USO also reports that NAS withheld holiday pay for a long period of time and only paid maternity benefits after the union took a case to court (Union Sindical Obrera, 2016). The Spanish trade union FSC-CCOO also accuses NAS of bad practices, claiming that ‘for all intents and purposes there is no difference between employees working for Ryanair and those working for NAS’. The union’s secretary characterised employment contracts as pirate contracts not used by any airline in Spain (NRK, 2013). The company itself maintains that it pays ‘local salary levels’ and follows ‘rules and regulations’ in all countries (Norwegian Air Shuttle, 2015).

Another important effect of outsourcing employment to agencies is that the agencies can unilaterally decide pay and working conditions. Fixed-term contracts can be terminated at short notice without reason (which has happened),<sup>4</sup> and for the employer outsourcing is

synonymous with temporary contracts. By resorting to agency work, the employer's position vis-à-vis employees has thus changed dramatically.

### **Restructuring permanent employees**

The other substantial change in NAS' employment policies is in its labour relations with permanent employees in Scandinavia, first and foremost in its home country. From being characterised as highly collaborative, relations have since deteriorated and are now marked by hostility and a lack of trust. This transformation was provoked through organisational restructuring, resulting in NAS – the mother company – no longer being the employer.

#### *'Creative organisational restructuring'*

In autumn 2013, before the start of wage negotiations with pilots in Norway, Sweden and Denmark, NAS, without due notice, announced that its Norwegian pilots would be transferred to a new subsidiary, Norwegian Air Norway (NAN). Though the pilots were to keep their current wages and working conditions, the Norwegian Pilot Union (NPU) saw this move as an attack on their bargaining position and warned of a possible strike. NAS' immediate response was to announce a change in the employment relationship for 220 pilots in Sweden and Denmark. These were given the choice of either being transferred to an external agency not subject to the collective agreement and being rewarded by a 3 per cent wage increase, or of being transferred to the new NAN subsidiary without any wage increase. With this move, NAS first wanted to prevent the Danish and Swedish pilots from striking, and, secondly, to break up the common collective agreement (Dagens Næringsliv, 2013). The company's strategy was successful: a strike was avoided, and all pilots were transferred to NAN despite their demand to be transferred back to NAS, the real employer. The company's one concession was to maintain the common collective agreement. However, just after concluding the wage negotiations with NPU, the company unilaterally changed the pilots' pension scheme. NPU took the case to court, but the legal proceedings did not start before the next round of negotiations (interview).

Immediately after its showdown with NPU, NAS, shortly before Christmas 2013 and without due notice, gave 52 flight attendants in Sweden the choice of either being dismissed or transferred to an agency already employing 300 NAS flight attendants in Sweden (interview). A couple of months later, cabin crews in Norway and Denmark were faced with a similar threat. In March 2014, before wage negotiations started, NAS announced, again without due notice, that cabin crews in Norway and Denmark, about 1000 employees, would be

transferred to two different subsidiaries: Cabin Services Norway and Cabin Services Denmark. Since NAS had just unilaterally changed the pension scheme of cabin crews based in Norway, the trade union threatened a strike, fearing a further deterioration of working conditions. As NAS refused to concede to any of the union's demands, the union went on strike (E24, 2014). NAS' response, via SMS, was to threaten to close down all bases in Norway apart from the main airport, to outsource the Copenhagen base, and to suspend ID tickets for three years (NRK, 2014a). After 13 days of strike, the contesting parties reached an agreement. NAS' strategy again proved to be successful: the flight attendants were transferred to the subsidiaries, and the union had to accept no rise in salaries. The one NAS concession was to maintain the common collective agreement for cabin crews in both Norway and Denmark (NRK, 2014b).

The next clash between management and the pilots occurred in February 2015. At that point in time, the parties had been negotiating for more than three months. At issue was the employer question: the pilots demanded to be transferred back to the mother company, NAS, or alternatively to have stronger links to it. Unable to reach agreement, NPU called a strike. NAS responded by publicly declaring that pilots in Norway, Denmark and Sweden were too expensive and thus a threat to the company's existence: pilots would have to inter alia accept a wage freeze, work more and accept more flexible rosters. If these demands were not met, NAS threatened to sack 200 pilots to cut costs. The CEO declared that neither he nor the company would in any way accede to any NPU demands. NAS reactions were not confined to threats: it reassigned pilots from other parts of the company to replace the striking pilots and leased aircraft to fly routes affected by the strike (ABC Nyheter, 2015a).

The contending parties had to accept compulsory arbitration, during which, again without due notice, management declared that its subsidiary NAN had decided to establish new subsidiaries in Norway, Sweden and Denmark: Pilot Services Norway, Pilot Services Sweden and Pilot Services Denmark. The pilots were given an ultimatum: accept or be sacked (ABC Nyheter, 2015b). NPU gave in, signing an agreement without any wage increases and with a less favourable pension scheme (Dagens Næringsliv, 2015a, wage agreement 10 March 2015). The NPU saved its face by getting NAS to sign an undertaking to maintain a certain number of pilots in Scandinavia for the next three years. What will happen after this period of time remains open. It also depends on how the Norwegian legal system will interpret the employer issue, as both the cabin crew union and the pilots' union have taken the issue to court.<sup>5</sup>

### **Changing employment practices: weakening unions and strengthening managerial prerogatives**

In its public announcements, NAS management states that it had to change its employment policy ‘in order to compete on equal terms in order to maintain a competitive edge outside Scandinavia’ (Norwegian Air Shuttle, 2015). To legitimise its claim, it published the salaries paid at the different bases, showing Norway to be at the top, see Table 3.<sup>6</sup> Typically, the geographic breakdown of employees outside Scandinavia features countries with lower wages and less regulation (see Table 3). For example, in 2012, Spain had the highest unemployment rate (more than 25 per cent) in the European Union. According to Spanish employees, the wage levels of NAS flight attendants in Spain ‘did not cover the cost of living’ (interview).

However, Table 3 also displays an insignificant variation in the remuneration of pilots across countries, suggesting a motivation other than just lower costs for employing agency workers abroad. This is also reflected in its strategy for employing Thai cabin crews on its trans-Atlantic flights. Despite the fact that Thai crews are paid substantially more than crews hired in Spain (see Table 3), the company has insisted on using these flight attendants, as they are less likely to organise.<sup>7</sup>

This objective is so strong that for years the company has put pressure on the Norwegian government to change the foreign law,<sup>8</sup> and has spent considerable amounts to back its claim, hiring lawyers to question the government’s interpretation and jurisdiction of the law. NAS claims the law runs counter to the Schengen agreement, and has threatened to sue the state if it is not changed. In June 2016, the government signalled its willingness to accede to the NAS demand (E24, 2016).<sup>9</sup> In addition to putting pressure on the Norwegian government, NAS lobbied the EU to obtain the Air Operator’s Certificate (OAC) for operating on the US market on behalf of its subsidiary based in Ireland – with success. In summer 2016, the Commission signalled its support for the NAS application by threatening the United States with a possible negative impact on the TTIP negotiations.

These types of strategies together with the company’s attitude to unions and unionisation indicate the weakening of unions as a goal in its own right. Several incidents support this assumption. For example, when pilots based in Spain demanded recognition, the company replied: ‘it is ok if you want to organise, but we don’t have any employees in Spain’. The pilots’ attempt to have their local union recognised as a social partner by OSM ES Aviation, the Spanish subsidiary of OSM, the agency that hires most of the NAS employees at their foreign bases, also failed.<sup>10</sup> NAS has also refused to recognise the cabin crew union in Spain,

and USO, the Spanish union responsible for organising cabin crews, has therefore taken the case to court. So far, OSM ES Aviation has succeeded twice in delaying the proceedings. As one trade union member commented ‘They (NAS) don’t want a judgment of the court which states that Norwegian doesn’t respect union rights’ (interview). So far, NAS has refused to recognise any union organising cabin crews at its bases outside Scandinavia.

By outsourcing employment, NAS is attempting not only to restrain the position of unions but to avoid all employee interference. For example, when employees in Finland wanted to discuss a matter, NAS told them to address the issue to OSM Aviation Finland, the agency concerned. The agency in turn stated that ‘this is not our responsibility’, telling the employees to turn to NAS, with the same outcome. In this way employees were sent on an ‘unending round dance’ (interview).

Last, but not least, offshoring and outsourcing employment serve to weaken the bargaining power of the unions in Norway, Denmark and Sweden. For one thing, offshoring employment is a signal to pilots and cabin crew that NAS can do without employees in these countries. Underlining this message, NAS has not hired any new pilot or cabin crew member at their bases in Scandinavia.<sup>11</sup> As Table 1 shows, the number of employees in Scandinavia shows a falling trend after 2014. As labour law, particularly in Norway, protects employees from being sacked without a legal reason, the decline takes place through retirement. Moreover, by transferring pilots and cabin crews to subsidiaries created solely for the purpose of employing these groups, the company has additionally managed to curb union power. The existence of these subsidiaries depends on the willingness of the mother company, NAS, to buy their services. If this is not forthcoming, the subsidiaries will go bankrupt and the employees can be legally dismissed.

NAS’ shift to anti-union policies is also observable in its behaviour vis-à-vis unions and employees in general. For example, past bargaining rounds have been marked by NAS ‘creating a difficult negotiation environment’ and an unwillingness to accept compromises. What could be called a ‘war of attrition’, including all sorts of changes in routines, remuneration, etc. is nothing more than a strategy to eliminate the unions, as they lack the capacity to deal with all changes and take proper action. The resultant outcome is that the company has unilaterally changed working conditions and routines that otherwise should have been subject to negotiation. The company also makes use of typical divide-and-rule strategies to discourage employees from organising: employees are openly favoured if they don’t organise, and threatened or intimidated if they have ‘too strong a voice’ (Dagens Næringsliv, 2015b).

To sum up, by using new forms of employment relations NAS has managed to reduce substantially the bargaining power of unions in its home country, while resisting unionisation at its foreign bases. Parallel with its attempts to weaken organised labour, it has succeeded in strengthening its managerial prerogatives. The importance of this strategic goal is confirmed by the CEO's claim of the necessity to 'rule without interference' (Dagens Næringsliv 2015c).

### **Discussion and conclusion**

The main objective of this article is to draw attention to employers' use of new forms of employment. The reason for this is the recent growth in atypical employment and employers' use of it to weaken unions.

The NAS case study demonstrates that by exploiting temporary and agency work, and transferring permanent employees to subsidiaries, the case study company has succeeded in weakening organised labour both at home and at its bases abroad. By outsourcing and offshoring employment, it can avoid unionisation and/or avoid employer responsibility. At the same time, offshoring and outsourcing employment signal to permanent employees in its home country that they are easily disposable. The strategy of transferring this employee group to subsidiaries dependent on the mother company buying their services, and not from competitive agencies, has severely weakened the bargaining power of the home-country unions. From this perspective, the case study supports previous research arguing that temporary and agency work are being used to discipline workers and subdue union bargaining power.

From an institutional perspective, the case study shows that employers can legally weaken organised labour despite the existence of strong trade unions and statutory labour protection. As such, it corroborates the assumption that employers embedded in highly regulated contexts have an incentive to exploit new forms of employment. Typically, the major European flag carriers based in countries with a highly regulated labour market – such as Lufthansa, Air France and Finnair – are increasingly emulating this type of strategy (though British Airways is not doing so).

Furthermore, the case study points out that the use of new employment forms appears to be part of a strategic move to increase managerial prerogatives. Several occurrences suggest that the case company is prepared to go a long way to be able 'to rule without interference'. On the one hand, it has demonstrated neglect of national law and labour institutions, avoiding information and co-determination, violating and unilaterally changing agreements, making

use of blacklegging and even attempting to violate basic human rights such as the right to organise. On the other hand, it has attempted to change legal frameworks and thereby to avoid social control and to constrain a state's sovereign capacity to control.

This is no new phenomenon. Management resistance is identified as a key factor in the decline of union density in the private sector in the United States (Kleiner, 2001). In Europe, there is a changing approach to labour: collective bargaining is increasingly seen as a cost-generating mechanism and as hindering decision-making and thus competitiveness. Such points of view fit into a neoliberal approach stressing the role of the principal actor in controlling economic resources. Enhancing shareholder value influences the role and behaviour of the principal actor. To what extent there is a conscious move among employers to weaken unions and strengthen managerial prerogatives is an open question. Some reports point in that direction, but more research is needed to substantiate such a trend.

However, further research must also take into account political-legal reforms at both the EU and the national level, as forms of employment ultimately depend on policy-makers.

#### Notes

1. In addition to atypical employment, amendments to labour law in EU Member States affect working time arrangements, dismissal and lower-level bargaining. In Norway, the use of agency work was liberalised in 2000, and temporary work in 2004 with a further adjustment in 2015 ([www.lovddata.no](http://www.lovddata.no)). A year later, in August 2016, statistics showed that the incidence of temporary work had risen.
2. The first sign of the change in its employment policies could be observed in 2008 when NAS transferred cabin crews at bases in Sweden to an employment agency.
3. Since several NAS employees at bases in Finland, Spain and the UK have been on temporary contracts for a longer period than allowed by local labour law, the staffing agency has had to grant some of these employee groups open-ended contracts.
4. For example, in autumn 2014, 50 pilots at bases in Spain, Finland and England were asked to take several months' leave or holiday. Unwilling to accept this demand, they were dismissed (ABC Nyheter, 2014). Frustrated, these pilots changed to Ryanair (Dagens Næringsliv, 2014).
5. At the end of June 2016, pilots and cabin crews in Norway won in the first instance in the Courts of Justice. NAS has appealed against the ruling.
6. It should be noted that the salary levels indicated by NAS do not refer to average annual compensation, but to the top salaries paid to senior personnel including meals and

accommodation. For example, starting salaries for co-pilots in Norway is NOK 340 000, which is below the average wage level in Norway.

7. This strategy has provoked both political and union resistance to NAS operations in the USA.

8. Lovdata.no: Forskrift om utlendingers adgang til riket og deres opphold her (FOR-2009-10-15-1286) called the foreign law. This law requires specific permission for people from outside the EEA for living and working in Norway.

9. The Norwegian Confederation of Trade Unions has taken the relaxation of this regulation to court.

10. In spring 2016, NAS offered that the pilots be recognised as two separate local unions, one for OSM ES and one for NAR ES (the NAS subsidiary in Spain). To avoid fragmentation, the pilots declined the offer and restated their claim to be recognised as only one local union.

11. NAS continues to recruit pilots and cabin crew members from the Scandinavian countries, but only at their bases abroad.

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**Interview list**

Interviewee 1 Trade union representative

Interviewee 2 Trade union representative

Interviewee 3 Trade union centrally

Interviewee 4 Trade union representative

Interviewee 5 Trade union centrally

Interviewee 6 Trade union representative

Interviewee 7 Trade union representative

**Table 1. Number of employees by country, 2007–2014.**

Year/country	2011	2012	2013	2014	2015
Norway	1697	1734	1857	1845	1730
Sweden	392	421	504	573	430
Denmark	242	252	347	331	283
Finland	105	128	188	179	175
Spain		167	294	599	819
UK		4	121	280	564
Ireland				12	55
Thailand			141		
Singapore/Bangkok			45	369	292
USA			9	185	228
Total	2435	2705	3507	4375	4576

Source: NAS Annual Reports 2011–2015.

**Table 2. Permanent and temporary pilots and cabin crew, 2012 and 2013.**

	2012	2013
Temporary pilots and cabin crew	680	1502
Permanent pilots and cabin crew	1517	1579

Note: NAS indicates temporary agency workers as temporary employees. There are very few temporary workers that are not temporary agency workers.

Source: NAS Annual Reports 2012 and 2013.

**Table 3. Annual compensation package pilot and cabin crew at the different bases.**

Pilot base	Norway	Spain	England	USA	Thailand
NOK	1 142 172	1 075 345	1 083 870	–	1 070 317
USD	150 264	141 472	142 594	–	140 811
EUR	129 337	121 769	122 735	–	121 200
Cabin crew base					
NOK	448 368	171 454	280 045	268 167	242 862
USD	58 987	22 556	36 843	35 280	31 951
EUR	50 772	19 415	31 712	30 367	27 501

Source: NAS Annual Report 2014.