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Workplace investigations, the epistemic power of managerialism and the hollowing out of the Norwegian model of co-determination

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Abstract

Workplace investigations are increasingly being used in Norwegian workplaces in both public and private sectors to investigate allegations of misconduct, harassment, blameworthy conditions, and other breaches of the Norwegian Working Environment Act. Workplace investigations are often triggered by complaints submitted through internal organizational whistleblowing and 'speak up' systems. With the *EU Whistleblower Directive*, ISO 37002:2021 *Whistleblowing Management Systems – Guidelines* and the ISO/AWI TS 37008 *Internal Investigations in Organizations* under development, we witness further standardization of whistleblowing systems and investigative procedures within organizations. And yet, these systems have so far received little critical attention. Our in-depth qualitative analysis of 22 such cases within standard employment relationships, informed by extensive literature review, secondary data and case files, has revealed that workplace investigations escalated conflicts, negatively affecting whistleblowers, trade union representatives, safety representatives, and other critical and dissenting voices, and that these systems leave little room for trade union representatives, co-determination or collective approaches to conflict resolution. We argue that this cannot be merely attributed to botched or biased investigations that have failed to follow 'best practice' guidelines. Instead, these

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are by default inquisitorial processes: the employer funds the investigation, creates the mandate and acts as prosecutor, police and judge in one. We analyse these methods and their epistemic power in light of the increasing privatization and pluralization of policing within the context of regulatory capitalism and the 'criminalization' of compliance, arguing that such methods are an expression of larger phenomena that lead to the progressive hollowing out of co-determination and workplace democracy and justice, in Norway and likely elsewhere.

Keywords
co-determination, epistemic power, freedom of speech, regulatory capitalism, whistleblowing, workplace democracy, workplace investigations

Workplace investigations as (an academically neglected) window into complexity

Workplace investigations or so called 'fact-finding investigations' (*faktaundersøkelser*) are increasingly used in Norwegian workplaces to investigate allegations of different forms of misconduct, censurable conditions, harassment, bullying, abuse of authority, corruption and other breaches of the Working Environment Act, and of internal ethical policies and codes of conduct.[1] These fact-finding investigations have become over the last decade established as the 'best practice' in response to complaints of wildly diverse nature and seriousness submitted through whistleblowing channels. The majority of complaints handled through whistleblowing systems pertains to the 'psychosocial working environment' – only very rarely to serious or criminal offences or breaches (Trygstad & Ødegård 2022). Despite this, fact-finding investigations – having acquired the status of 'best practice' as they became promoted as the go-to solution by a range of private consultants, organizational psychologists and lawyers, and business schools – are being almost by default applied to *minor* and indeed, all, complaints – not only *serious* complaints where an investigation could be warranted. The introduction of such highly formalized processes reflects larger tendencies towards increased individualization, standardization and 'managerialization of law' in workplaces (Edelman et al. 2001). In our previous work, we have shown that these investigations can have profound negative impacts on individuals, organizations and workplace environment. Several of our informants were diagnosed with post-traumatic stress disorder and suicidal ideation; workplaces were described as having developed 'fear culture' (Nordrik & Kuldova 2021); none of our 22 cases involved *serious* breaches of the law or crime; individual and organizational harm resulted from the investigation. Fact-finding investigations have received little critical academic attention. We argue that it is high time to analyse workplace investigations as a complex social and cultural phenomenon, and go beyond utilitarian and pragmatic critiques that merely propose a better 'best practice' and improved guidelines as a solution to the recurring negative consequences of the investigations.

Extending on our previous work, we aim to open a larger international critical academic debate on the nature of workplace investigations as a social phenomenon and a

manifestation of larger managerial trends, and their impacts on workplace democracy, freedom of speech and justice. The individual and organizational harms we have come across in our cases of workplace investigations, we argue, are neither accidental nor unique. They stem from more fundamental violations of principles of due process and freedom of speech; the latter being curbed to an unacceptable degree by demands on employees' loyalty and techniques of reputation management. Furthermore, these harms stem from the subjection of individuals to intrusive investigative methods, interrogations and arbitrary 'trial' situations by parties empowered to act on behalf of the employer. These parties have disproportionate power, including the power to define the mandate for the investigation, what knowledge and facts are to count and what arguments are to be dismissed as beyond the scope of the investigation. This article will try to show how these harms can be linked to the particular form of 'epistemic power' manifest in the workplace investigations. Here, epistemic power is understood as the distinct 'ability to influence what others believe, think, or know' and to 'enable and disable others from exerting epistemic influence' (Archer et al. 2020: 28). Epistemic power can translate into a form of 'epistemic violence' in the hands of the employer where the knowledge of the worker and of the trade unions is either dismissed or strategically ignored, while the employer draws on managerial 'epistemic frameworks that legitimise and enshrine those practices of domination' (Galván-Álvarez 2010: 12). Not only are workplace investigations underpinned by very particular forms of knowledge that have acquired distinct epistemic power in management at large – drawing on law, psychology and management theories, privileging *individualized* interpretations over structural and collectively oriented interpretations privileged by trade unions, but the employer – in search for individuals to blame, punish or dismiss – has also disproportionate epistemic power to dismiss testimonies privileging complex structural and organizational interpretations. Trade unions thus find themselves, as we will try to show, also in an 'epistemic struggle' when trying to resist the dominant forms of knowledge that individualize workplace relations and that manifest themselves in practices such as workplace investigations and when trying to make visible alternative conceptualizations (Icaza & Vázquez 2013).

Workplace investigations are embedded in a particular 'governance' logic (Supiot 2017) and a managerial 'institutional logic' (Thornton et al. 2012) which privileges certain forms of knowledge over others. The implementation of workplace investigations as 'best practice', we argue, contributes to the institutionalization of this managerial logic and to the progressive hollowing out of the Norwegian model of co-determination from within. It contributes to the *withering away of alternative epistemologies* that used to help conceptualize and navigate industrial relations. Unlike the *collectively*-oriented Norwegian models of co-determination and conflict resolution, workplace investigations institute *individual*-oriented practices: the formalized investigation *imitates* simultaneously both a police investigation and a court proceeding and is marketed to employers as the 'best practice' and an optimal solution to 'put an end to a conflict or complaint'. Consequently, it becomes the only thinkable and legitimate way to handle *very different* forms of grievances – despite many of these grievances being collective and organizational in nature and cause.

Throughout this article, we consider these investigations an 'exemplary example' (but not the only example) of the hollowing out of the Norwegian model (Højer & Bandak 2015). We consider the introduction of these methods to Norwegian working life as one

of many *symptoms* of larger neoliberal transformation of Norwegian workplaces through the ideology of managerial control and domination, which relies on practices of internal policing, monitoring and investigations. Being such an exemplary example, a reflexive analysis (Alvesson & Sköldberg 2018) of the theoretical and epistemological presuppositions of the method as these manifest in concrete cases of workplace investigations can offer us a unique prism through which to understand larger and complex structural developments; exemplary examples are 'good to think' and can function as a window into complexity (Appadurai & Breckenridge 1992). Other researchers may find parallels elsewhere, beyond the Norwegian context. This being said, the Norwegian case may be uniquely revealing also due to the fact that workplace investigations are still a relatively new and not yet fully naturalized as a practice; they are still explicitly understood as the *employer's method*. In the United Kingdom, the United States, Canada or Australia, on the other hand, workplace investigations have become a hegemonic common sense – even for trade unions. Moreover, since fact-finding investigations have been adjusted to the Norwegian context primarily by psychologists, they tend to be more *psychologizing* than workplace investigations in the more litigious contexts, where they are primarily informed by legal professionals. While these key differences have to be kept in mind, there may be an opening for future comparative work on the phenomenon.

This article is intended as a contribution at the intersection of critical management studies, working life studies, critical sociology and anthropology of law and governance, being *transversal* rather than interdisciplinary in its approach. It builds further on our in-depth qualitative study of 22 cases of workplace investigations encompassing 31 interviews, extensive literature review, secondary data and case files, published as a research monograph in Norwegian (Nordrik & Kuldova 2021). Workers in all our cases are in a standard employment relationship; an exploration of this phenomena as it plays out in the gig and platform economy and non-standard employment systems elsewhere would be an interesting venue for future research (Wilkinson et al. 2022). The monograph presents an in-depth analysis and description of four case studies, walking the reader through the different steps in the process leading up to the investigation, the actual investigation and the aftermath; this is complemented by a critical reflexive analysis informed by the other cases, extensive literature review and documentary evidence. Furthermore, this article is grounded in new insights from follow-up interviews on concrete cases (Kuldova & Nordrik), a series of seven expert interviews and 6 months of digital ethnography of the compliance and RegTech industry conducted by Kuldova in 2021 (Kuldova 2022). While building on these empirical insights, our goal here is not to delve yet again into empirical detail. Instead, we aim to use our analytical insights to raise several key questions pertaining to the epistemic power of these investigations and its consequences, which we suggest need to be further explored in future research; as such, we aim to inspire others and open a new field of inquiry. As in our monograph, even here we have followed reflexive methodology. Together with Alvesson and Sköldberg (2018: 143), we approach critical theory as 'triple hermeneutics', drawing attention to the underlying political dimensions of the phenomena under study, in our case, workplace investigations and to the epistemic struggles. We consider social science 'a matter of interpreting interpretive beings', where a 'critical interpretation of unconscious processes, ideologies, power relations, and other expressions of dominance that entail the

privileging of certain interests over others, within the forms of understanding which appear to be spontaneously generated' (Alvesson & Sköldberg 2018: 144) stands at the centre. Questions of power and the utilization of certain forms of knowledge in its service, at the expense of others, emerged as key in our analysis of workplace investigations across cases. Workplace investigations are an employer's tool shaped by particular forms of knowledge that have become hegemonic in the realm of management thought and that conflict with the forms of knowledge that have informed industrial relations, and the latter are being suppressed by the former. Through our reflexive methodology, we show how certain forms of knowledge can become hegemonic, a form of epistemic power that in turn shapes relations in the workplace, while silencing and delegitimizing alternative interpretations, and even causing harm. We show how that which is unilaterally deemed 'best practice' can end up causing harm, and how critique merely ends up stimulating a demand for *more* of the same (rather than a serious rethinking of existing practice), and how 'best practice' takes the form of privatized and pluralized policing. We present a reflexive analysis stemming from insights gained across our cases, which points us to larger transformations of the workplace under neoliberalism. We argue that we are witnessing a transformation of workplace relations that has to be analytically and theoretically linked not only to the spread of managerialism but also to increasing incorporation of investigative and de facto policing methods into managerial apparatuses. In other words, the phenomenon of workplace investigations is most productively analysed in the larger context of pluralization of policing where the state delegates part of its powers to private and non-state actors (Loader 2000; Verhage 2011) and where compliance evolves into a form of management that privileges the policing logic of investigations, control and monitoring over other managerial strategies (Nelson 2021, Kuldova 2022). These trends are also visible in the rapid growth of post-national criminal justice within the context of regulatory capitalism, and in the rise of the global compliance industry (Boels & Verhage 2015; Levi-Faur 2017; Nieto Martín 2022; Kuldova 2022).

Disrupting the limits of the critique of workplace investigations

Academic literature on workplace investigations has been limited and largely focussed on the context of Australia, the United Kingdom, Canada and predominantly concerned with legal analysis (Ballard & Easteal 2018; Lattal 2016; Matsson & Jordan 2021; Woska 2013); in case of investigations of bullying and harassment, with organizational psychology (Merchant & Hoel 2003). Unsurprisingly, much of this literature emerged from contexts where the unionization rate has been dramatically declining while litigation, alternative dispute resolution (ADR) to circumvent litigation (Lipsky & Seeber 2000) and use of other quasi-legalistic and hybrid instruments has been on the rise. In these locations, Human Resource Management (HRM) has displaced the power of collective industrial relations and radically transformed the understanding of conflict in the workplace. Conflict has been reframed as singularly negative and the concept of power has been banished; individualization, formalization, contractualization, legalism and juridification, along with visions of harmony and legal and ethical compliance have been foregrounded (Godard 2014a; Roche & Teague 2012; Slaughter 2007; Van Gramberg

2006). Haugh (2017) has furthermore shown how legal and ethical compliance has been 'criminalized' in these contexts as compliance programmes have come to *mimic* criminal law. This *imitation* of criminal law and of the police investigative powers is a key, alas often missed insight; it can, however, explain why the reaction to becoming subject to these investigations that imitate criminal proceedings can be so dramatic, as organizational conflict, dissent, disagreement, tensed relations and so forth, become quickly handled *as if* criminal offences and in practice 'criminalized'. Academic disinterest in this subject is startling given the fact that workplace investigations likely impact tens of thousands of workers across the globe each year, if not more. While whistleblowing and in particular the figure of the whistleblower has received increasing academic attention (Ceva & Bocchiola 2019; Kenny 2019; Olesen 2019; Sampson 2019), this has not been matched by interest in workplace investigations, even though these investigations are often present in whistleblowing cases.

Workplace investigations have been largely considered an academically uninteresting bureaucratic, formal and legalistic procedure, a mere matter of 'objective' and 'neutral' 'fact-finding' – precisely the way they are being marketed by legal and accountancy firms. In certain regional context, such as the United Kingdom or Australia, workplace investigations have become so normalized that they have become almost invisible to a critical and reflexive gaze. Few tend to question the power relations involved in the construction of the 'facts', further testifying to the unquestioned epistemic hegemony of these managerial practices – even within academia. And yet, our informants experienced these inquisitorial processes as deeply problematic, having not only destroyed their health and work environments but also undermined their trust in the rule of law and the justice system. The sense of injustice that our informants voiced was further amplified by the actual powerlessness of the co-determination apparatuses and worker councils vis-à-vis the power of the management – despite the widespread cultural glorification of Norwegian workplace democracy, the Norwegian model being furthermore tied to a sense of national pride and exceptionalism. While the popular cultural narrative emphasizes the strength of the Norwegian trade unions and of positive consensus-generating collaboration between the parties, our informants experienced the weakness of this model – even in cases clearly *within* the mandate of the trade unions. While the workplace investigations are sold as a method to address complaints and breaches of the Work Environment Act, all our cases – except for one pertaining to sexual harassment – were cases of critical and dissenting utterances pertaining to *organizational* challenges in the workplace, *collective* grievances, related to work pressures and conflicts over work conditions. None of these were perceived by those raising these complaints as (possible) breaches of the Work Environment Act or of other internal codes of conduct. Despite this, these concerns triggered extensive investigations, which silenced critique and targeted individuals who voiced this critique, rather than addressing the points of contention and their causes. Workplace investigations were thus across all our cases used as a managerial tool to individualize issues, turn these into a matter of problematic or challenging *individuals*, or fractions, which are then to be investigated, typically for their behaviour under the suspicion of 'harassment', 'bullying' or otherwise 'toxic' or 'counterproductive' workplace behaviour. This was possible precisely because of the epistemological and theoretical underpinnings of the method as such, which afforded the employer

the epistemic power to reframe organizational concerns in terms of problematic individuals.

This is symptomatic of the clash between the market and management institutional logic – of which workplace investigations are the exemplary example – and the institutional logic of industrial relations in which workers strongly believe, but which is increasingly undermined precisely by these imported individualizing managerial techniques of control and power. There is an underlying ongoing epistemic struggle between management and trade unions, between the individual and collectively oriented understandings of conflict, between a perspective that erases power and another that foregrounds power imbalances (Godard 2014a; Seifert 2018). This is often missed by studies starting from the position that workplace investigations are simply a pragmatic, bureaucratic, objective and quasi-legalistic way of handling complaints. Such studies have produced a *limited* critique of workplace investigations, typically focusing on issues of neutrality, independence, objectivity, and training and accreditation of the investigator, on challenges connected to inherent biases and reflexivity of the investigator and concerns with procedural fairness – with the aim of improving the quality of investigations and upgrading 'best practice' (Ballard & Easteal 2018; Branigan et al. 2019; Grimstad 2015; Hoel & Einarsen 2020; Lattal 2016; Pearson 2021; Woska 2013). While these are important matters to consider when one first sets out to investigate, this form of critique evades the more fundamental, sociological, epistemological and political questions pertaining to the privatization of law, extensive punitive, investigative and surveillance powers of the employer (often without any possibility to challenge the final reports and decisions), the subjection of freedom of speech to the principle of loyalty and organizational reputation and the limits of justice within such a system. This limited form of critique – a 'permissible' form of critique given the epistemic hegemony of managerialism – further stimulates the investigative market (with new and updated trainings, guidelines, certifications) and forecloses any possibility of raising these questions and imagining coherent and better alternatives. The same way the trade union representatives in our material find themselves in an epistemic struggle vis-à-vis the hegemonic managerial (Mir 2003), individualizing and psychologizing investigative discourses as they struggle to pinpoint organizational and collective problems, we as academics discovered a similar dynamics in the academic discourse dominated by legal scholars where possibilities for critique are limited to the pragmatic.

The industry behind the epistemic hegemony of workplace investigations

The absence of any consideration of the larger socio-political and economic contexts, and the invisibility of workplace investigations to the eyes of more critical scholars is startling given the fact that these investigations are one of the core products of the rapidly growing multi-billion-dollar private investigation industry (King 2020). This industry encompasses legal firms, small and large audit and consultancy companies, be it the Big Four or small and medium-sized local suppliers of 'health, safety, and environment services' (HSE), compliance solutions suppliers, and increasingly also the RegTech industry that delivers regulatory technologies for compliance, surveillance, monitoring and

forensic evidence for investigations and internal risk and threat management, as well as whistleblowing case management software (Barberis et al. 2019). Lawyers, investigators (often former police and intelligence officers), consultants, organizational psychologists, occupational health service workers and increasingly also data scientists through their production of automated and even predictive workplace monitoring and surveillance systems have dominated this industry, while HR managers, legal advisors, compliance officers and others within organizations have often been trained by the same actors to conduct internal investigations. Numerous handbooks and HRM best practice' guides have been published (Arntfield 2021; Barnett 2019; Dwoskin & Squire 2018; Einarsen et al. 2016; Ferraro 2006; Guerin 2019; Kuldova 2022), making it into compendia of business schools. The market for continuing professional development (CPD) points-giving private courses, webinars and certifications has been rapidly expanding as concerns about the quality of investigations have been voiced by employees and trade unions. The Technical Committee ISO/TC309 *Governance of Organizations* of the International Organization for Standardization (ISO) is at the time of writing developing guidelines for *Internal Investigations in Organizations* (ISO/AWI TS 37008)[2], having finalized the ISO 37002:2021 *Whistleblowing Management Systems - Guidelines* – work that has coincided with the *EU Whistleblower Directive* that came into force on the 17 December 2021. There is thus a global industry shaping and standardizing the future of work (Bartley 2005, 2011), coding the same management standards, guidelines and regulations into digital workplace monitoring, surveillance and management products, a growing amount of consultants and lawyers training HR, business school graduates and so forth, themselves trained in the same investigative procedures – in the name of universalistic visions of regulatory 'best practice' and 'good governance' (Garsten & Jacobsson 2011; McGowan 2018; Mungiu-Pippidi 2021). These actors repeat the same mantras, raise the same critiques (which quickly turn into new markets and sources of profit) and through creation of 'best practice' guidelines suggest that there is no better or alternative way to handle concerns and conflicts that naturally do emerge in organizations. Paraphrasing Fisher's (2009) 'capitalist realism' and the impossibility to imagine alternatives to capitalism, we could coin the term 'governance-cum-managerial realism'. This governance-cum-managerial realism is not in natural and given, but is actively created by a multitude of powerful market players, lobbyists, standardization and industry bodies, national and transnational governance bodies, and civil society actors through networked and hybrid global governance (Graz 2018; Nieto Martín 2022). The key driver behind the market for private investigations and compliance products has also been the valorization of 'reputation' on the stock market, and the increasing costs of reputational damage – with the introduction of New Public Management, this concern for both reputation and efficiency has been appropriated by the public sector in Norway as well. The silencing and investigations of internal critique can be also read as an effect of this reputation management. The rise of the audit industries has been stimulated, repeatedly, by corruption and other corporate scandals (Shore 2003). The amount of capital and time that is channelled into building reputations, which can be – in the networked world of social media – destroyed in seconds, is a form of capital that needs to be protected by the organization at all costs. This has led to the securitization of all forms of critical utterances, and even of emotions. The proliferation of risk ratings and surveillance

of employees, and the quest to identify insider threats through so called insider threat management systems before they act – in the logic of 'pre-crime' (McCulloch & Wilson 2016; Kuldova 2022) and to control knowledge, prevent leaks and whistleblowers from speaking up, and the quest to combat all signs of unease with disproportionate weapons can be seen as an effect of these complex developments and acceleration of 'regulatory capitalism' (Levi-Faur 2017).

The Norwegian case in our view demonstrates that despite these universal 'good governance' narratives, there was an alternative, even if never perfectly realized. An alternative that sprang from a radically different way of conceptualizing, knowing, understanding and organizing workplace relations. An epistemic alternative that is now being progressively hollowed out by the intrusive power of these global developments, but that nonetheless reveals that what is being sold as a universal 'best practice' is just one of many possible paths imaginable. It shows that it is possible to imagine coherent alternatives, and that the self-proclaimed universal 'best practice' has acquired its status, epistemic power and hegemony by being backed by powerful capital interests and at the cost of disempowering workers, now actively undermining even established alternatives, such as the Norwegian model of co-determination and tripartite collaboration between employees and trade unions, employers and authorities (Gustavsen 2011; Hernes 2006).

Workplace investigations in Norway: a mere illusion of co-determination?

Norway has been a relative latecomer in incorporating formalized investigative methods. Their use has been far more widespread in low-unionized and hence more individualized and litigious contexts, such as corporate America. While private investigations in the sphere of anti-money laundering (AML) and anti-corruption within the financial sector have emerged in Norway parallel with national and transnational regulations of the financial sector, the progressive introduction of investigations into workplace settings can be traced back to the project 'Work without bullying' (*Jobbing uten mobbing*) led by the Norwegian Labour Inspection Authority between 2005 and 2007, and to the consequent emergence and implementation of zero-tolerance policies against bullying and harassment. The zero-tolerance logic of the war on terror, followed by the war on drugs and now war on harassment (Newburn & Jones 2007; Stockdale et al. 2004), informed by the 'broken windows theory' of policing, has moved into the workplace; in the latest iteration of this logic, there have been proposals for handling 'micro-aggressions' in the workplace through the same approach (Prieto et al. 2016). The Norwegian Whistleblowing Committee similarly stated that it 'has a zero vision for the labour market: No blameworthy conditions should emerge'.[3] This zero vision is now embraced by the codes of all public sector institutions and a majority of private sector. With this, workplace conflicts, professional disagreements, complaints about organizational challenges and other problems stemming from the inherent power imbalances between management and workers have been in practice recast primarily as an issue of harassment and bullying by 'deviant' individuals displaying 'counterproductive behaviour' (Cullen & Sackett 2003). It is precisely here that we see epistemic power at play as key notions become reconceptualized with profound consequences. Increasingly smaller breaches of ethical codes and etiquette

trigger investigations and sanctioning; compliance often exceeds legal requirements. At the same time Norwegian media, consultants, opinion makers, popular speakers on leadership, business school lecturers and others are discussing and conceptualizing workers and leaders through psychological personality categories – as displaying traits of the 'dark triad' of psychopathy, narcissism and Machiavellianism (LeBreton et al. 2018), or as 'toxic' (Lubit 2004; Smith & Fredricks-Lowman 2019). This individualizing psychological perspective has progressively silenced the collectively oriented and sociologically informed industrial relations perspective that has been at the core of the Norwegian model. The 'therapeutic culture' has conquered Norwegian workplaces (Nordrik 2012; Madsen 2014; Madsen 2017), a cursory scrolling through popular lectures for leaders and managers in Norway testifies to this: personality stereotypes, pop-psychology or promises to handle 'psychopaths' at work prevail. This conceptual and epistemic individualism has opened the door to the introduction of the so-called 'fact-finding' investigations wherein complaints are reduced to a conflict between accuser and accused, consequently investigated through an imitation of police interrogations and intelligence gathering while often infused with a (pop)psychological jargon. The method was introduced by the same organizational psychologists and lawyers who participated in the original project against workplace bullying, several connected to the influential milieu studying workplace harassment at the University of Bergen (Bille et al. 2008; Einarsen et al. 2011). Three key actors have then established a consultancy company[4] that conducts investigations and offers courses and certification in the method (even if not accredited in any way) and wrote a book formalizing this method, now a standard reference (Einarsen et al. 2016). This method has consequently been incorporated into portfolios of many Norwegian legal firms and providers of occupational health and safety services, as well as accounting and consultancy firms, including the Big Four.

While the method was initially developed to target cases of bullying and harassment, it has been later extended to encompass all thinkable and suspected breaches of the Work Environment Act and internal Codes of Conduct, which go beyond the scope of the law. With the development of whistleblowing channels in Norwegian workplaces – introduced in 2007 (Meld. St. 29. 2010–2011), evaluated in 2010 (Trygstad 2010) and becoming a legal requirement for all companies with more than five employees in 2020, building on the recommendations of the Norwegian public inquiry committee on whistleblowing (NOU 2018: 6) – 'fact-finding' investigations have become marketed as 'best practice' response to complaints submitted through whistleblowing channels, becoming the go-to solution and commercial product when addressing workers' complaints of *all* kinds, irrespective of content. This despite the fact that there are many other appropriate, less invasive and better suited methods, no less those traditionally used for conflict resolution by trade unions. A recent Swedish study of 81 workplace investigations in bullying cases has concluded that this victim-perpetrator logic of investigations is not suited to address the problems being raised, which typically pertain to larger organizational and structural issues, and that antecedents to bullying are not best explained at individual level (Matsson & Jordan 2021).

Fact-finding investigations (*faktaundersøkelser*), even though comparable to 'workplace investigations' elsewhere, are, in the Norwegian context, to be differentiated from both 'mediation' (Nylund 2014) and 'private investigations' (*gransking*) which should

ideally comply with The Norwegian Bar Association's guidelines for private investigations.[5] These guidelines are a soft-law regulation of the otherwise unregulated practice. Fact-finding investigations in the workplace are often likened to a miniature version of private investigations, thus evading these (already soft) guidelines (Einarsen et al. 2016). Unlike the softly regulated private investigations that focus to a somewhat larger degree on organizational and causal factors, fact-finding investigations focus predominantly on the individual, behavioural and psychological elements. The 'investigator' or 'fact-finder' claims to step out of his professional role as lawyer or psychologist and step into a constructed role as an 'investigator' (Einarsen et al. 2016). This enables the now 'investigator' to evade professional ethical regulations, too. Across all our cases, we have seen this strategic juggling with roles occurring. In other words, there is no regulation, even soft, pertaining to fact-finding investigations, and no professional body to which one can legitimately complain about the process or its results; the investigators claim not to act in their professional capacity even though they derive their legitimacy and credibility precisely from the value that society ascribes to legal and health professionals.

The Norwegian Labour Inspection Authority does not have any monitoring, regulatory or sanctioning possibilities pertaining to fact-finding investigations or whistleblowing channels; it has merely the duty to inform about legal obligations to have such channels and to handle complaints appropriately; what 'appropriately' means is at the discretion of the employer. In all our cases, employees and their representatives contacted the Norwegian Labour Inspection Authority and were rejected with the answer that the case was not considered a work environment problem, but a *personnel* problem. Again, we can observe the epistemic power of reframing the issue at hand as an issue of problematic individuals as it colludes with the power of the employer. This lack of any possibility to dispute the process left our informants confused and constituted a new experience of being without real protection from any government agency or public body. The only way to contest the results and decisions made based on investigations is to go to court. This is often beyond the means of individuals. Furthermore, those who reach the court, find out that these reports are presented as 'evidence' and 'objective proof' in the case. Fact-finding investigations are even explicitly sold as an effective 'employer's tool' to 'put an end to cases of employee dissatisfaction' (Einarsen et al. 2016: 223)[6]; its authors explicitly argue that 'if used systematically and correctly, their use will result in fewer court cases, or at least fewer cases that the employer loses' (Einarsen et al. 2016: 225; translation ours). Or else, as the authors put it, 'there is no other method that safeguards the interest of the employer equally well' (Einarsen et al. 2016: 81; translation ours). While there have been a few publicly known cases of fact-finding investigations used even in the trade union organizations, which have been heavily criticized, as a rule these investigations are considered an employer's tool and initiated by the employer; this further boosts the already disproportionate power of the employer at the cost of the employee.

The introduction of these systems has been partially enabled by the developments of Internal Control Regulations[7] since 1996, pushed by Organization for Economic Co-operation and Development (OECD), when attention shifted from the control and monitoring of workplaces, to the control and monitoring of control systems (Karlsen 2010; Ryggvik 2008). This resulted in the rise of 'system experts' at the cost of 'practice

experts' (Kamp & Nielsen 2013). While Internal Control Regulations emphasize 'employee participation' (note that the word co-determination was replaced with the much weaker notion of participation), in alignment with the Working Environment Act which requires the participation of 'safety delegates and members of working environment committees' in 'establishing and maintaining internal control' and states that 'employees and their union representatives are entitled to be consulted in connection with management and planning system', the regulations simultaneously state that internal control is to be 'integrated in the overall management and planning of the enterprise'.[8] This thinking is in line with the logic of management system standards (e.g. ISO 9001:2015 *Quality Management Systems*, ISO 450001:2018 *Occupational Health and Safety Management Systems*, ISO 37000:2021 *Governance of Organizations*). In practice, such integration often means that trade union representatives are merely 'informed' but have limited possibilities to influence the introduction of these integrated systems often supplied by or developed in collaboration with external audit and consultancy companies.

The rise of 'regulatory capitalism' (Levi-Faur 2017) has furthermore stimulated massive growth of a global audit and compliance industry, and of privatization of the law through self-regulation and pluralization of policing (Boels & Verhage 2015; Verhage 2011; Kuldova 2022). Workplace investigations are part of this trend of pluralization of policing as it manifests in new management techniques. The 'regulatory state' has in practice delegated or outsourced part of legal enforcement to organizations (Veggeland 2010), resulting in the emergence of 'mini-courts' or 'mini legal proceedings'[9] in a legal grey zone (Campbell & Manning 2014). While it has been often assumed that increased individualization, formalization and juridification of workplace relations has been directly linked to declining unionization (Colvin 2016), our case shows that the power of these global trends within HRM and compliance is greater than the combined power of local laws, agreements, high rate of unionization and widespread national pride in the 'Norwegian model' of workplace co-determination. Given that we still have more or less the same formal systems and protections in place, this needs to be ascribed to the epistemic power and the epistemic hegemony of managerial and governance discourses and the ways in which they reshape actual practices from within rather than targeting the formal frameworks. International trends of multi-stakeholder governance, of the layering of governance, of delegation and privatization of regulatory and enforcement powers have become well-established in Norway; Veggeland (2009, 2010) has analysed this as the Norwegian 'regulatory state' that has contributed to the depoliticization of key political issues, such as labour relations.

While in Norway, the proportion of unionized employees has been stable for the past decade at around 50%,[10] and formal co-determination apparatuses are largely present, researchers have argued that despite this, workplace democracy is under pressure (Falkum et al. 2019). These trends, combined, contribute to the hollowing out the Norwegian model from *within*, disempowering workers and their representatives. Workplace investigations are an example of how this happens – paradoxically with the best intentions of protecting workers from harassment. As critical Norwegian researchers of working life have been arguing, the introduction of apolitical individual-oriented, bureaucratic management technologies have been quietly undermining the (political) logic of industrial democracy, turning trade unions and their representatives into

disempowered observers, with a limited role to play. This has in practice reduced the role of trade unions to two core functions for the unionized: access to legal help and salary negotiations, again increasingly individualized. Problems and conflicts previously resolved informally, through constructive dialogue, and active involvement of employee representatives, are increasingly individualized, formalized and juridified. The qualitative *Co-determination Survey* conducted by researchers at the Work Research Institute in Oslo has come repeatedly to the same conclusions (Kuldova et al. 2020; Falkum et al. 2019). The continued prevalence of the *formal* apparatuses of collective representation, such as works councils and other representative bodies, and of the high level of unionization has meant that this *transformation from within* and the process of hollowing out has received little academic attention (Nordrik 2012), despite being a matter discussed internally within the Norwegian trade unions. The leadership, political elites and often trade unions themselves (to recruit new members and demonstrate power) prefer to maintain the illusion of the continued existence of workplace democracy in what many view as its de facto absence (*skinndemokrati*, in the parlance of our informants). This 'HR-ification' (Kamp & Nielsen 2013) from within means that complaints of all sorts within the workplace have been transformed into individualized acts of whistleblowing and thus redefined as 'personnel issues' out of reach for trade unions, and placed into the domain of HR, legal experts or psychology consultants; this also marks the epistemic shift. In a system that maintains such illusions of co-determination and workers' power, the existence of practices, such as workplace investigations, with their imitation of police interrogations and of legal proceedings, comes as a shock to most employees who suddenly find themselves in their whirlwind – be they whistleblowers, those accused, or witnesses – making them disillusioned.

In the following, we present selected key moments in our material to illustrate the workings of the epistemic power of workplace investigations as a managerial tool in practice. Given that most cases are incredibly complex, stretching over months, some even years, each with hundreds of pages of supporting documentation, we cannot delve in depth into these, which we have already done elsewhere (Nordrik & Kuldova 2021). Our aim here is to link the key repetitive moments across the cases to the epistemological underpinnings of the method and the larger socio-political and economic contexts sketched above, to argue for new ways of making sense of workplace investigations as a social phenomenon. By doing so, we simply wish to challenge the forms of the limited 'permissible' critique of the practice of workplace investigations and open up a new field of inquiry.

From a critical utterance about organizational issues to becoming a whistleblower

Complaints are typically submitted through dedicated digital whistleblowing channels; this lowers the threshold to report (*si ifra – speak up*). The complaints, already at the initial stage, are forced to conform to pre-defined parameters and categories through a form which asks the 'whistleblower' to describe the subject matter and identify perpetrator(s), potential witnesses and provide any other relevant information for a future investigation. Investigations are then either conducted internally, often by HR or an occupational health worker, or outsourced to an external third party, often a legal firm

or a consultancy company with personnel with background in organizational psychology, law, and occupational health and safety (HSE). Not only official channels, but also an employee interview (*medarbeidersamtale*) can trigger the same process; the leader either encourages the employee to formalize a complaint or does so herself based on the received *intelligence* about a third party. While some of our informants felt they were forced to formulate a complaint, others had not even understood that they blew the whistle. Only a minority used the formal channels, but they did so in good faith to improve working conditions, not having understood the consequences and the processes that they set into motion. The way the form is structured already shapes the ways in which the complaint could be legitimately formulated, forcing the *individual* complaining into a pre-determined role and the complaint into pre-determined form compatible with the epistemic imperatives of the investigative logic.

Trade union and health and safety representatives in several of our cases acted on behalf of others in the capacity of their duties and positions of trust; they reported on challenges connected to either the organization of work, safety measures, professional disagreements or voiced other forms of legitimate critique. In all these cases, through the process of complaint formalization, they were recast as 'challenging individuals', becoming themselves the object of investigation. Their concerns and the subject matter of the report were dismissed. Instead, the case took the turn of 'harassment' and 'bullying'. The process of formalization has thus effectively reshaped the very subject of the complaint, typically cutting out and removing any mentions of context and complexity and dismissing organizational concerns, preparing the epistemic grounds compatible with the investigative logic.

As one of our informants, who was a safety representative, and following the investigation diagnosed with post-traumatic stress disorder, put it: 'it was only when they began formalizing things that I understood that I had been made subject of an investigation, but then it was too late' (D2). Not the subject matter, but *he* has become the subject of the investigation. This was a common experience. During the investigation, D2 has been subjected to undercover surveillance, repeated interrogations, forced to hastily sign tendentious and deficient interrogation notes, where none of D2's comments and corrections have been incorporated, or as D2 put it:

> At that time, I realized I was fooled around, that it was staged. I experienced it as abuse of power, where I was terribly degraded, only so that the report would substantiate the decision to sack me. That it was a psychologist who subjected me to this has burned itself out in my soul and inflicted irreparable damage on me. The psychologist never asked about the actual cause of the conflict between the safety representatives and the management. Not a single question would capture how the relation worked. The psychologist helped the management to make me into a problem.

In this case, a protracted legal battle followed; even though the court stated that the employer was clearly guilty in inflicting psychological damage on the 'whistleblower', D2 nonetheless lost the case against the powerful corporation.

In another case that we investigated later (not one of the 22 original cases), X1, an anti-corruption and ethics officer is informed of procurement irregularities that indicate regulatory breach and corrupt practices involving around several mil. USD. Upon informing the leadership, first anonymously and then in the capacity of an anti-corruption officer, X1 became progressively labelled as a 'work environment problem' and as 'toxic',

resulting in a range of sanctions. Even though several financial audit investigations and counter-investigations followed (one establishing a regulatory breach, resulting in a legal tug-of-war), additional fact-finding investigation was outsourced to another audit company as a response to a consecutive complaint against retaliation, sanctions and threats. Attention was turned to the *character* of the now so labelled 'whistleblower' who was identified as *the* problem; an ADR battle ensued that stretched over several years and resulted in a dissatisfying settlement and character assassination. Kari Breirem, possibly one of the most famous and early Norwegian whistleblowers, who reported financial irregularities, argued that

> the problem today is that no matter what the complaint is about, the case strikingly often ends up as a personnel problem. The employer initiates retaliation. For many whistleblowers this has ended in a personal disaster no matter what the compliant was about.[11]

With one exception, in all our cases, the initial subject of the complaint – pertaining to structural and organizational matters – is progressively, through formalization and incorporation into the procedural logic of these miniaturized imitations of legal proceedings, reduced to an investigation of inappropriate or counterproductive *conduct* of one party (or even both, as in many cases, the result is loss–loss). Law combined with psychology informs these investigations and through their combined epistemic power reshapes the subject matter in through its perspectival lens, favouring individualization and psychological perspectives as well as 'positivity' of supposed 'facts' over sociological and organizational complexity, and critical reflexivity; the latter having no place in these processes.

Moreover, the core activities of trade unions, supported by law and negotiated agreements, are within these perspectives viewed in themselves as 'counterproductive work behaviour'. We can read the following in academic literature that acts as an ideological support for these perspectives: 'recognizing that strikes or work to rule are functional for the unions and union members, they nonetheless run counter to the organization's productivity and profits and to that extent illustrate counterproductive work behavior' (Kelloway et al. 2010: 22). In our cases where trade union and health and safety representatives were targeted by workplace investigations, this strategic move enabled the employer to turn legitimate concerns of several employees (represented by this individual) into a personnel matter, and consequently dismiss these larger concerns; the employee representative became an individualized whistleblower. In many cases, the effects have been chilling; individuals often do not dare to step forward or take upon themselves the roles and duties as employee representatives.

While retaliation against whistleblowers has been by now widely recognized as a serious problem both within academic and policy circles (Carollo et al. 2020; Kenny et al. 2019), to which the *EU Whistleblower Directive*[12] which came into force on the 17 December 2021 testifies, proper conduct of workplace investigations has been proposed as a neutral and most appropriate solution precisely to this issue. The suggestion that this is 'best practice' is legitimized by references to deontological principles, 'due process' and *procedural* justice. As new criticism arises, new guidelines and regulations tend to follow in order to improve the practice (which has been shown to be dysfunctional), generating new compliance and audit markets; this results in further layering of regulation, where the answer is always *more* and more detailed regulation. This is also the logic behind the

ISO/AWI TS 37008 – *Internal Investigations in Organizations* currently under development. Further standardization reinforces the illusion that this is the only possible 'best practice', a practice that can be universally applied. In the typical wording of the 'scope' of ISO standards: 'organizations of any size, complexity or industry can apply this document to create a compliance management system by following its requirements', to take an example of ISO 37301 (p. 20). The same notion of a universal method underpins the claims made by handbooks on workplace investigations, arguing that these present 'general overarching principles and techniques that are applicable in all Western jurisdictions and to all workplace types, regardless of specific job descriptions, corporate policies, or regional labor and human rights laws' (Arntfield 2021: xxviii). Even though many publicly available whistleblower accounts reveal that workplace investigations, dressed in a cloak of 'objectivity', 'best practice', 'legalese' and universal procedural justice were used to silence whistleblowers and even legitimize employer's retaliation, often resulting in protracted legal battles where law sides with the powerful,[13] the solution is always *more* (of the same) and better investigations. Here we can again see how epistemic hegemony is actively produced and underpinned by concrete interests. That workplace investigations can be linked to retaliation and harassment by the employer has been shown in our own previous research (Nordrik & Kuldova 2021), and by other researchers (Kenny 2019). But discussions about retaliation and whistleblowing have been largely kept separate from any critical discussion of workplace investigations. Similarly, any critical scrutiny of the vast industry of professionals conducting these investigations and of its impacts on workplace relations has been largely missing from the debate.

Trade union representatives reduced to silenced observers

Despite the method being sold as a universal, apolitical and neutral 'best practice', in the Norwegian context – and possibly elsewhere – it undermines the legal *intentions* of the Work Environment Act and of the negotiated basic agreements[14] and instead disempowers trade union and other employee representatives where it should empower them. Workplace investigations, in tandem with whistleblowing channels, enable the employer to bypass works councils and co-determination bodies by (1) reframing the complaint as a personnel matter, typically of harassment and bullying, hence confidential and by (2) setting into motion an investigation, which is legitimized as a neutral best practice response. This strategic bypassing of the trade union representatives came both as a shock and surprise to our informants. A23, a trade union representative, described to us how the investigators made actual representation impossible:

> I just sat there. I told them [the fact-investigators] that this was a difficult case for me, and even more difficult as I wasn't entitled to say or have opinion about it. They [the fact-investigators] made me a spectator. I was so critical of their questions and how they were going to use the answers. . . . I totally lost my trust in the system.

While our informants were concerned about the manipulation of 'facts' and about the knowledge production, the premises with which investigators approached them, and

often tried to challenge these, such concerns were dismissed and defined as outside of the scope of discussion; reflexivity itself was delegitimized and dismissed throughout the investigative process oriented towards the uncovering of 'facts'. Rhetorical recourses to methodological positivism and individualism by the investigators further served to dismiss any critique of the biased production of 'facts'.

This reduction of the trade union representatives to silenced observes came as a surprise to all our informants, but any reader of the international handbooks on workplace investigations could anticipate such treatment. In one such handbook, we can read that:

> For example, some union employees will ask to have their union representative present during an interview. (. . .) the organization might conclude that it is desirable as a matter of policy that such an individual may have a union representative present during the interview. *The union representative may not, however, interfere with the interview. If the investigator feels that a union representative is interfering with an interview, the investigator should immediately contact legal counsel for advice as to how to proceed* (Thompson 2013: 59; emphasis ours).

In the Norwegian context, it has been suggested that trade unions should be 'involved' in the *making* of anti-bullying and anti-harassment policies and guidelines, but once such a policy is approved, they should have no further say in the actual investigations; with regards to the policy implementation, they should be merely informed about it (Bille et al. 2008; Einarsen et al. 2016). Rather than having an actual say in it, the unions are to be used strategically to *legitimize* the policy at the point of its making. These policies typically also mention investigations as a suitable method to handle complaints and which are developed by the top-management, in line with the 'tone from the top' rhetoric of the compliance industry. Again, the battle is waged over whose knowledge is to count and over the power to frame issues that arise.

Workplace investigators imitating police interrogations and intelligence gathering

Workplace investigations utilize often both 'constructive' and 'reconstructive' methods of investigations, or else, both undercover intelligence gathering, and interrogations of whistleblowers, witnesses and the accused, document analysis, including e-mails, social media and more (Ferraro 2006; Hoel & Einarsen 2020; Sennewald & Tsukayama 2006). In the Norwegian context, the method is also stated to have more in common with a police investigation than with work environment and employee surveys or other 'soft' conflict resolution methods (Einarsen et al. 2016: 131). The terminology used is often appropriated from policing, prosecution and court rhetoric. This hybrid creates the illusion of a legal prosecution and 'justice' – under the condition of their absence. As we have shown in detail in our previous work, investigators in the Norwegian context do not follow any guidelines for interrogations, such as, for instance, the PEACE model. Instead, investigators resort to mere notetaking. Similarly, the principle of *Audi alteram partem* (listen to the other side), is merely *imitated*; corrections are systematically dismissed, and the mandate typically removes any causal and organizational factors from the investigation, thus decontextualizing it. This in turn enables 'behaviour' and the focus on

psychological make-up to become the primary subject of the investigation, thus taking the subject matter of the complaint out of the organizational and collective context. All our informants experienced the interrogations as intrusive, stressful, exhausting, disproportionate and as strategically attempting to construct a false or distorted narrative that either outright dismissed or bypassed the subject of the complaint. Or as V35 put it:

> I have been two times to an "interrogation" lasting several hours. It has been a shocking experience. Dozens of allegations were made (. . .) neither me nor the others accused of different things have been heard, despite massive written documentation.

The epistemic underpinnings of the method simultaneously shape and legitimize what is to be relevant to the investigation and what is outside its scope; the epistemic power here rests precisely on the ability to dismiss certain forms of information or testimonies is *irrelevant*, while emphasizing others.

The imitation of policing methods and the emergence of these hybrid quasi-legal proceedings also mean that employers are in practice given simultaneously the powers of lawmakers (through codes of conduct and other internal policies), prosecutors, police officers and judges, staging disciplinary mini-courts as they investigate the 'breach of law' themselves. This is also why our informants described these processes as inquisitorial Kafka trials. These investigations are only exceptionally brought to court, 'as a result, "suspects" in private investigations have fewer rights than suspects in a public (police) investigation, which will always be assessed by the public prosecutor or a judge' (Boels & Verhage 2015: 10). Many, even after having sought legal help, felt powerless and abandoned by justice. Moreover, the intrusive nature of these investigations, some even digging into private social media accounts, has consequently undermined their trust, resulting in individual practices of self-censorship even after the case was over. At the organizational level, the emergence of culture of fear was described. The combination of legal, policing and psychological knowledge, and their combined epistemic power, are likely to continue reshaping power relations within the workplace, empowering the employer and disempowering the worker.

Workplace investigations utilizing policing methods must be also seen in the larger context of worker monitoring and surveillance afforded by current digital platforms and new forms of datafied knowledge and insight. Management and HR in particular have adopted practices, such as 'background checks' (Thomas et al. 2015), while compliance and algorithmic management software is sold with the promises of real-time generation of 'forensic evidence', 'behavioural and emotional analytics', detection of 'insider threats' and assignment of 'risk-scores' to individual workers, all presented in sleek and glossy management dashboards (Kuldova 2022).[15] Such systems are designed precisely with the investigation and even pre-emption of breaches in mind – be those of ethical or legal, while institutionalizing a culture of surveillance, permanent benchmarking, quantified performance management, competition and individualization where solidarity and any notion of the collective is eliminated by default design. Simultaneously, this default design stimulates not only individualization but also practices of 'gaming' the stats, 'micro-frauds' and other forms of evasion and resistance of the managerial gaze (Kuldova 2021; Haugh 2017). In the last few years, the issue of employers hiring union-busting legal firms that compile dossiers on employees, relying heavily on data from social media as well as internal organizational intelligence, has also come to attention.[16] Law,

psychology and policing and surveillance practices increasingly both shape and inform the algorithmic architectures of workplaces and decision-making, further enhancing their epistemic power, in the service of capital.

Conclusion: hybridization of workplace 'governance' and the harshening of workplace relations

The sense of confusion, disorientation and disempowerment that our informants experienced when confronted with the investigators can be traced to the hybrid quality of these investigations and to the epistemic violence experienced as their interpretations and testimonies become dismissed and/or reframed through psychologizing and individualizing frameworks. The introduction of whistleblowing channels with their pre-structured complaint forms has created a new 'disclosure regime' (Sampson 2019) that has both effectively displaced and bypassed traditional informal and collective modes of managing disagreement, complaints and conflicts bound to emerge in workplaces. 'Hybrid' refers to a combination of two or more elements; a hybrid acquires new features that the original elements did not have, resulting in a distortion and displacement of meaning (Bhabha 1994). In war and conflict studies, hybrid is often used about a combination of military and non-military weapons and instruments that deliberately challenge and exploit legal, institutional and conceptual lines of division, thus blurring boundaries. The aim of hybrid weapons is to disorient the enemy, destroy familiar defence mechanisms and attack the weakest points. Workplace investigations are such a hybrid, in the Norwegian context, and possibly elsewhere. They are a new combination of legal, psychological and health-related tools with which employers and management enhance their arsenal of technologies, using these to put a swift and final end to a complaint or a whistleblowing case, while protecting their reputation and maintaining organizational status quo. The ideals of 'due process', 'justice' and 'best practice' are not only distorted, but also directly subverted and weaponized. *War*, hand in hand with 'zero tolerance' is also the key metaphor through which workplace conflict is understood in much of the literature on workplace investigations. War is a metaphor that HR, management and the compliance industry appear to 'live by' (Lakoff & Johnson 2003). Conflict, critical utterances and disagreement are all considered as something negative, as that which must be eliminated, fought and suppressed at all costs in the name of seamless harmony, an ideal world of total compliance, loyalty and zero breaches. The psychologization of workplace relations, as Godard has analysed in detail, has eliminated any understanding of interest conflicts, or any positive understandings of conflict for that matter. In psychologised HRM, 'conflicts are individualised, attributable to individual self-seeking and assumed to be solved by aligning individual goals with those of the organisation through various incentive schemes' (Godard 2014b: 8). Complex, holistic, critical and organizational perspectives are excluded, as are 'for example structures of power, regulatory mechanisms and collective actors such as trade unions' (Harley 2015: 401). This psychologization and individualization of organizational matters, in tandem with legalism and securitization, informed by HRM, standardized management systems and other managerial ideologies, contributes not only to the hollowing out the Norwegian model of co-determination from within as it delegitimizes the very forms of knowledge on which it is built, but

also enables precisely the weaponization of methods, such as workplace investigations. Possibly, the biggest blow is to the ideal of justice; any last semblance of 'equality of arms' is demolished by the definitional, epistemic and economic power of the employer wording the mandate and hiring external or utilizing internal investigators. The road to the (illusions of) loyalty, compliance and harmony appears to be paved by an increasing harshening of workplace relations: from monitoring, surveillance, investigations and interrogations, to miniature quasi-legal proceedings.

The scope of the damage to individuals, organizations, free speech and workplace democracy created by deployment of these 'hybrid weapons' is hard to access or measure in any way. There is no official statistics on the number of investigations conducted each year, informal estimates from trade unions range into hundreds, even thousands a year. But, we know that the number of providers of these services has grown rapidly over the last decade, from the major law firms that include it in their portfolios to the accountancy firms, such as the Big Four, and courses aimed at HR personnel and occupational health and safety representatives offering training in the method proliferate. We also know that many, if not the majority of public sector bodies, such as universities, schools, hospitals, public administration and more have signed framework agreements for workplace investigations and similar investigative and legal services worth millions of NOK. Since confidentiality clauses and non-disclosure agreements are the most common outcome of post-investigation settlements, the real scale of the use of these investigations cannot be publicly known. Several potential informants who wished to talk to us were prevented from speaking to us because of such clauses, while others had to leave certain information out of their narratives. Pagan has likened non-disclosure agreements to 'weapons to kill the knowledge of the less powerful who have been the victim of serious misconduct to the benefit of the more powerful who perpetrated the misconduct' (Pagan 2021: 302). The weaponization of workplace investigations and consequently non-disclosure agreements is made possible as trade union representatives become systematically sidelined and silenced by legalese or even threats of a new investigation. Invoking Pagan's argument, we could make a larger point that workplace investigations in the Norwegian context are such weapons to kill the knowledge of the trade unions.

Recent studies have argued for the need for strengthening of the employee voice vis-à-vis these processes (Van Gramberg et al. 2020) and can be read as an advice and attempt to re-humanize workplace relations. One question is whether this is possible, another whether we do not need more fundamental rethinking of these developments. This being said, it is vital for trade unions and trade union representatives to be aware of these methods in order to effectively challenge them and insist on representing their members and to understand the epistemic struggle at the core: a struggle about the very meaning of power, control, inequality and conflict. In the Norwegian context, the key advice may be to invoke other forms of knowledge, insist on de-escalation, dialogue and mediation, as well as processes conducive to *reflexivity* around organizational practice, and on the utilization of the representative channels that are better able to address the organizational issues at hand and the *cause* of the matter, rather than the person(a), while also insisting on the use of the least invasive methods prior to proceeding to any formalized investigation; the latter should be reserved only to very serious cases and as a means of very last resort. None of the cases in our material were of such seriousness, instead, it was the process itself that created a disproportionate harm to both individuals and organizations.

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Notes

1. https://lovdata.no/dokument/LTI/lov/2020-06-19-69 The *Working Environment Act* (LOV-2005-06-17-62) was last amended in 2020.
2. https://www.iso.org/standard/74094.html (last accessed 5 January 2022).
3. http://www.nordiclabourjournal.org/nyheter/news-2018/article.2018-03-23.6386185291 (last accessed 10 January 2022).
4. *Arbeidsmiljøspesialistene AS* (Work Environment Experts), established in 2012.
5. https://www.advokatforeningen.no/globalassets/1092/retningslinjer_for_private_gransk-ninger.pdf (last accessed 6 January 2022). These guidelines from 2019 are at the point of writing under revision, partially due to our work on 'fact-finding investigations', which has stimulated a public debate about the regulation of the private investigation industry.
6. In all cases of citations from Norwegian, the translation is ours. This also includes all informant statements.
7. https://www.arbeidstilsynet.no/contentassets/cf0737ad44a8497a8058731c64cef64f/internal-control-regulations.pdf (last accessed 6 January 2022).
8. https://www.arbeidstilsynet.no/contentassets/cf0737ad44a8497a8058731c64cef64f/internal-control-regulations.pdf, p. 26.
9. https://www.fieldfisher.com/en-ie/locations/ireland/ireland-blog/will-employer-investigations-now-become-like-mini-legal-proceedings (last accessed 7 January 2022).
10. https://www.worker-participation.eu/National-Industrial-Relations/Countries/Norway/Trade-Unions (last accessed 2 January 2022).
11. https://www.dn.no/innlegg/arbeidsliv/jus/arbeidsmiljoloven/innlegg-varsling-omhandler-mer-enn-arbeidsmiljo-lovgivningen-er-mangelfull/2-1-850463 (last accessed 5 January 2022).
12. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1937 (last accessed 5 January 2022).
13. https://eu.usatoday.com/in-depth/news/investigations/2021/12/09/cop-whistleblowers-courts/8811830002/. This recent case is in this sense instructive and represents a typical pattern (last accessed 5 January 2022).
14. For example, the Basic Agreement between the Norwegian Enterprise (NHO) and Norwegian Confederation of Trade Unions (LO) https://www.lo.no/contentassets/2b75318eaad64229a5c5d135c81c4ecf/basic_agreement_lo-nho_2018-2021.pdf (last accessed 10 January 2022).

15. For examples of such software, you can take a live demo tour of the Teramind platform. This is just one of numerous products on the market: https://www.teramind.co/ (last accessed 10 January 2022).
16. For a recent example, see: https://www.vice.com/en/article/pkdqaz/lazy-money-oriented-single-mother-how-union-busting-firms-compile-dossiers-on-employees (last accessed 10 January 2022).

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