

EQUALITY BARGAINING IN THE AUSTRALIAN PUBLIC SERVICE: INCORPORATING GENDER MAINSTREAMING

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INTRODUCTION

As with other industries, the Australian Public Service (APS) has experienced a rapid increase in enterprise level bargaining since 1996. At this time, APS wages and conditions were regulated by one APS-wide award and one enterprise agreement (Molloy, 87). By 2007, government policy, reinforced by workplace relations legislation resulted in the APS being regulated by over 100 agreements (CPSU, 2008a). Correspondingly, and as a consequence, the level and availability of family provisions varies between agencies

While some outcomes of the collective bargaining process are generally known by the quantitative availability of family provisions (see for example, Baird et al, forthcoming), little is known about how parties negotiate for these entitlements, especially in the APS. Research conducted in the European Union has examined bargaining processes to identify the factors which lead to gender equality items – including family provisions – being incorporated in final collective workplace agreements, however this research has not been conducted in Australia. This paper redresses this by examining the process of workplace negotiations within an APS agency which resulted in increased family provisions.

The first section of this article reviews the literature on equality bargaining, highlighting its characteristics and also the importance of mainstreaming equality issues. The second section details the methodology used and the third section provides the contextual background, of bargaining in the APS. The fourth section presents and analyses important research findings. The article concludes by highlighting the importance of this research area, future directions for this research and implications for equality bargaining in the APS.

EQUALITY BARGAINING

In the 1990s, European Union researchers examined the process of “equality bargaining”. Equality bargaining refers to the way industrial parties bargain for the inclusion of gender equality items in collective workplace agreements. Colling and Dickens state that equality bargaining:

“...encompasses the collective negotiation of provisions that are of particular interest or benefit to women and/or are likely to facilitate gender equality (‘special measures’); equality awareness on the part of negotiators in handling commonplace bargaining agenda items such as pay and pay opportunities (‘gender-proofing’), and the injection of an equality dimension (specifically, addressing gender disadvantage) to the negotiation of change, for example reforming a grading structure” (1998, 390).

Complementary research has identified obstacles to collective bargaining achieving gender equity. For instance, Wever notes that issues of concern to female employees are “particularly difficult or particularly impractical to reach agreement through collective bargaining or political labour-management negotiations” (2003, 245). Hantrais and Ackers also argue that the focus needs to broaden from the male breadwinner model, with the

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employment relationship at the centre (2005, 211). They believe that work and family issues need to be a mainstream part of bargaining to reduce the separation between industrial relations policies centring on “work” and those focusing on “family” issues (Hantrais and Ackers, 2005, 211).

Equality bargaining researchers have found that when women are involved in the bargaining processes, equality measures are more likely to be included in final agreements (Dickens, 1998, 34). Research also finds that when equity provisions are given a high priority in the bargaining agenda, there is a high rate of these being included in the final collective agreement (Kumar, 2002, 20). Researchers have also found that a convergence of interests between management and unions is necessary for the introduction of equality measures (Alemany, 1997, 97; Colling, 1997, 12).

Collective workplace agreements can institutionalise indirect sex discrimination and mainstreaming gender equality can redress this (Dickens, 2000, 199). Mainstreaming requires that both unions and management examine agreements for their differential impact on women and men on a broad range of issues (Colling, 1997, 45). Mainstreaming means that issues which are not obviously an ‘equality’ issue should be examined, as “all issues subject to collective bargaining have an equality dimension” (Dickens, 1998, 12).

METHODOLOGY

The case study being examined in this paper forms part of a larger study examining six bargaining rounds in both public and private sectors to determine the prerequisite factors for equality bargaining. In-depth interviews are the primary method of data collection, and interviews with union officials occurred prior to, and throughout the course of formal workplace negotiations. Interviews were transcribed, coded and thematically analysed. Data gathered from the case studies is augmented with other supporting data, including corporate documents about the organisation and the bargaining being undertaken.

BACKGROUND: BARGAINING FOR FAMILY PROVISIONS IN THE APS

The emphasis on enterprise bargaining within the Australian workplace relations system commenced in the early 1990s and gained pace with the passage of the *Workplace Relations Act* 1996 and the *Workplace Relations (Work Choices) Act* 2005. As with other sectors, the APS experienced increased bargaining at the agency level, the use of individual contracts and increased regulation of union bargaining (Molloy, 2007, 89). In 2008 a federal Labor government was elected, with a very different workplace relations policy to the previous government. The new government stated that “the modern workplace relations agenda ...[is] about ensuring cooperative fair workplaces” (Gillard, 20 August 2008). The government introduced the *Fair Work Act* 2009, which replaced Work Choices. The new workplace relations legislation enhances family provisions, incorporating test case entitlements increasing parental leave and enshrining a right to request flexible working arrangements. However, while the legislative minima has increased, the emphasis remains on bargaining at the enterprise level for additional family provisions.

As the government is the ‘ultimate employer’, it is able to use the public service as a ‘testing ground’ for its workplace policies (O’Brien and O’Donnell, 2007, 128). This function is again being utilised, and a bargaining framework was introduced to facilitate cooperative bargaining in the APS prior to the operation of the Fair Work Act (Department of Education, Employment and Workplace Relations, 2008, 14). This framework also encouraged agencies to work with employees and unions to consider how workplace agreements could incorporate family provisions to the benefit of both parties (Department of Education, Employment and Workplace Relations, 2008, 20).

Regulatory changes also occurred within the main union covering the APS, the Community and Public Sector Union (CPSU). To counter the decentralisation of the APS and resulting differentials in wages and conditions (Jones, 2008) the CPSU developed a centralised 'core' claim with the aim that this would provide consistency across all agency negotiations (interview with union official, 8 August 2008). The core claim forms the basis of any log of claims for negotiations, although claims are also tailored to individual workplaces.

There has thusly been much regulatory movement, with legislation which increased family provisions, APS bargaining guidelines which encouraged bargaining for family provisions, and a redeveloped union log of claims. It is therefore timely to consider how family provisions were bargained in the APS, using a case study as an indicative example.

About the Case Study Organisation

Before examining the negotiations, it is necessary to briefly profile the case study organisation (hereafter referred to as 'Publicorg'). Publicorg had almost 6,000 employees, and over 80 per cent were women. Over a third of employees worked in 230 branches which served the public. A quarter of the employees were aged over 50, and 60 per cent had been with the organisation for four or more years. Eighty-seven per cent of staff earned below \$76,000 a year, and over 60 per cent of staff earned \$48,101 or less. In other words, this was an agency employing a large number of relatively low paid, older women. The union density in the organisation was about 35 per cent (interview, 11 April 2008, union official), and historically members had not been overly industrially active.

This paper focuses on paid parental leave and personal/carer's leave in the case study organisation. Publicorg was one of the few large APS agencies which did not have 14 weeks paid maternity leave (interview, 8 August 2008, union official). It also did not provide any paid paternity/supporting partner leave, with parents required to use personal leave for this purpose. The personal/carer's leave provisions for Publicorg reflected an industry standard of 18 days per year, cumulative. However, due to an error/oversight in previous negotiations, new starters to the organisation were credited with 18 days, and then also accumulated 18 days throughout the year, accruing 36 days personal/carer's leave in their first year.

The Union's Claim

The core claim contained a number of family provisions, including 14 weeks paid maternity leave, with a further 14 weeks for the primary care-giver (building on the standard of 14 weeks available to major agencies), 6 weeks paid supporting partner leave and adoption leave, and up to 5 years unpaid parental leave (CPSU, 2008b). As well as increasing the paid maternity leave claim to 14 plus 14 weeks, in 2008 the union resolved to negotiate for a staged increase in the quantum of paid maternity leave, to 26 weeks by 2013. This claim was based on a need to modernise the paid maternity leave arrangements in the APS, which had essentially not changed for the past 35 years, to enable parents to care for their babies in the 'crucial' first six months (CPSU, 2008c).

The union's claim for personal/carer's leave was to expand the definition of carer's leave to include caring for dependents who required unforeseen care, but who were not sick and also caring for non-dependents. The claim also included that reasons be provided in writing if an application to access a provision to assist employees with caring responsibilities was denied.

NEGOTIATING FOR FAMILY PROVISIONS IN PUBLICORG

Prior to the commencement of the formal negotiations, the union implemented an education campaign on paid maternity leave, as in previous negotiations there had been some resistance from union members. However, the high profile community debates had an

impact, with members being more accepting of the claim (interview with union official, 7 July 2008). Even so, the union felt that some additional communication with members on this issue was necessary:

'We've gone out and done some messaging around this...The best way to raise consciousness on this issue, the one that works for us getting support, is to say 'Look, [Publicorg] is falling behind other government agencies', and that's something they feel strongly about...then we're saying that we haven't had a change since the 70s. Most other things in that category have improved, but the amount of mat leave hasn't...' (interview with union official, 27 June 2008).

The negotiations between the union and Publicorg commenced as distributive (ie. hostile) bargaining. Historically, the relationship between the employer and the union was ambiguous, as management had simultaneously displayed both a hostile and an accommodating attitude to the union. The employer accommodated union activities, by, for example, facilitating national meetings for elected workplace delegates three times a year. Simultaneously however, the employer prevented the union from sending emails to all members, which the union saw as a sign that they were discouraging collective union organising (interview, 11 April 2008, union official).

However, these negotiations started as distributive, with the employer wanting to include non-union staff representatives in negotiations, despite this being contrary to the spirit of the bargaining framework. Ultimately, the union refused to negotiate until this issue was resolved. Negotiations recommenced when the union agreed to the draft principles, which clarified the (limited) role of these staff members (interview with union official, 7 July 2008). This early win was important for the union, as it shifted the power balance, and although it was not possible to directly gauge the impact on equality bargaining, the negotiators believed that it did have an affect on the general tenor of the negotiations.

This resolution did not signal an end to distributive bargaining however. Management responded initially to the majority of the union claims with a negative response, supported by few reasons. The employer repeatedly delayed providing their log, and then only tabled their position on some of the claims when the negotiations were well advanced. The employer cancelled some of the bargaining sessions. The union negotiators also reported that the general tone of the meetings were heated, although the relationship did improve as the negotiations moved towards resolution (interviews with union officials, 1 August 2008; 25 August, 2008; 26 August, 2008; 11 September 2008, union official; 23 September 2008).

The employer did not table what the union considered a log (interview with union official, 23 September 2008), but did provide an 'agenda', outlining their concerns. This contained items beneficial to employees, including an unspecified amount of paid paternity leave, as well as proposals to lower conditions, specifically with a claim to reduce personal leave (union bulletin, July 2008). The employer's reasons for introducing the paternity leave clause are unknown. The union believed however, that the employer introduced this entitlement in response to their claim, and also as it was in the employer's interest to do so:

'They had this as part of their claim to have paternity leave as a stand alone entitlement, and really what they're trying to achieve isto take it out of personal leave. So this doesn't fall into unplanned leave, so will make their reporting look better. ...It's in our interests and in their interests for different reasons (interview with union official, 23 September 2008).

The employer position on paternity leave was contained within an agenda which also severely curtailed personal/carer's leave entitlements. The employers' initial claim was to cut the leave from 18 to 10 days a year, to introduce a new category of 'special leave' of 5 days a year, non-cumulative, for special circumstances including support for family members who were not ill, which would need approval from the agency head and be supported by

evidence (union bulletin, July 2008). This would therefore have reduced the amount of personal/carer's leave available to employees and increased compliance activities while also increasing managerial prerogative.

This claim generated extreme hostility from staff and union members towards the employer, resulting in collective action. The negotiators had concerns that any action would not be successful, as their experience had shown that engaging in industrial action is a gendered activity, with employees in female-dominated agencies being less willing to take industrial action than employees in other workplaces (interview with union official, 10 November 2008).

However, an action was organised, building on a sustained union communication campaign. Members wore stickers and held morning teas to highlight what they perceived as an unjust proposal. The action was designed to be fun and not aggressive, to encourage participation. The union also held a photo competition for the best photo of members taking collective action, which were displayed on the union's website. The majority of branches participated in the action and generally everyone in a branch participated (interview with union official, 12 September 2008). That the action was widespread indicates the importance that employees attached to the personal/carer's leave issue. The union officials were pleased with the action: '(I) Was hoping [the action] would be this successful. One member made 200 cup cakes with [Publicorg's corporate colours] icing. This was from the same workplace where a couple of months ago people wouldn't sit next to the union, and were making jokes about management hiding in the Coke machine...' (interview with union official, 12 September 2008).

The collective action was effective, as a breakthrough was made, with the employer twice revising their position on personal/carer's leave. The new position eventually saw a return to providing 18 days a year personal leave and this also included three days 'special' leave to enable employees to care for non-immediate family and to respond to household emergencies. The amount of personal leave to be credited to new starters on commencement was also reduced to 5 days. The union agreed that new starters would not be entitled to 36 personal/carer's leave in the first year, a trade off that the union foresaw early in the negotiations and one which did not disadvantage existing members.

This new personal leave clause effectively gave the union the conditions they were seeking in regard to personal/carer's leave – existing staff did not face a diminution in leave, and could also use the leave for child care and caring for non-dependents. The new provision also required that reasons for refusing a request for carer's leave needed to be provided by the employer upon request (union bulletin, October 2008). This position benefited both parties – the employer secured a reduction in the amount of personal leave available (for new starters), and the union secured that employees would be able to use the leave for a wider range of purposes than contained in the agreement. The employer also agreed to an additional 2 weeks paid maternity leave, without too much prompting from the union.

However, the union also made these gains (and prevented corresponding losses) not only through members taking industrial action, but also through a discrete negotiating strategy, where the union deliberately did not discuss management's position, instead focusing on their claim. This ensured that it was the union's, and not the employers' agenda which was the focus of negotiations. The union negotiator explained:

"...the moment that we start focusing on their [management's] position, that then becomes the benchmark for what we're discussing. And all the discussions are then about bringing it [the conditions] to a better level, rather than the other way around" (interview with union official, 23 September 2008).

Essentially then, increased family provisions were achieved through distributive bargaining and negotiating a core claim which included gender equality. This was achieved with the use

of this positional strategy, progressed by members and staff taking industrial action and supported by a sustained union campaign.

DISCUSSION

There are a range of factors which clearly contributed to equality bargaining being successfully undertaken in this case study, and this research has identified important new factors. This research has generated findings which have a basis in traditional bargaining theories, as well as findings directly related to the literature on equality bargaining. The range of factors contributing to equality bargaining can be further grouped into general factors, and those which specifically show that mainstreaming is a necessary prerequisite.

Firstly however, this case study raises an important issue about bargaining within the wider community. This case study shows that the bargaining guidelines requiring agency co-operation with unions had little effect on the negotiations. If the APS is a "testing ground" for the government's policies, this may indicate that co-operative workplace bargaining, as envisaged would result from the Fair Work Act, may take some time to actualise. Clearly, practice lagged behind policy in this instance.

This case study also provides important insights about the nature of the bargaining process and the resulting family provisions. According to traditional bargaining theories, at the commencement of distributive bargaining, the parties need to assess the others' strengths and the point at which they are likely to make concessions (Walton and McKersie, 1965, 61). The parties tested each others' bargaining power, and the union secured a win as the employer conceded the terms regarding the participation of non-union members. This early win increased the union negotiators' confidence and strengthened the union's bargaining position. This win, combined with the union's positional strategy, followed by industrial action were the key factors used by the union as it negotiated an equality bargaining item.

At times industrial action may be the only means to achieve family provisions being agreed to by the employer, and this case study demonstrates the elements of a successful industrial action. These include: choosing an issue which clearly resonates with members, majority participation, high profile activities which are visible to line managers, and imbuing the action with a sense of fun, which not only assists in attracting participation, but also assists with union campaigning and in raising the profile of the union generally.

As with other research on equality bargaining, this case study also demonstrates that even when distributive bargaining is occurring, employers and unions may have interests which coincide, even where the underlying reasons differ (Alemany, 1997, 97). The use of a family provision – in this case, paternity leave – as an inducement in a package which sought to reduce other conditions also resulted in the introduction of family provisions, and as this case demonstrates, without a significant loss. The introduction of paid paternity leave was achieved through a convergence of union and employer needs.

As identified by other researchers, the negotiation of equality bargaining items are likely to be successful when given high priority. The importance accorded to equality issues came from the union's central governing membership body and the union leadership. This case study shows that strong union leadership is necessary to ensure family provisions are central in the union's negotiating agenda, which then directs negotiators. Once the union is committed to bargaining for these provisions, it is also necessary for the union to lead and educate the members, where, reflecting the community generally, opinion can be mixed. Community support and a high media profile of these issues added to these being viewed favourably. The core claim of the CPSU was a tool to achieve equality bargaining as defined by Colling and Dickens. Using their definition, the bargaining items accorded with the category of special measures, as increased personal/carer's leave and parental leave would benefit

women and also contribute to gender equality by enabling male employees to increase family involvement. This case study also highlights important new mechanisms for mainstreaming equality bargaining. Firstly, as mentioned, equality issues were included throughout the CPSUs core claim, although somewhat limited to traditional issues affecting women, as items without an obvious gender element were not analysed for a possible differential impact.

Secondly, the core claim was mainstreamed throughout the union, in effect imposed from the 'top down', so that all negotiators were required to include these items in their log of claims and negotiate these issues. Thirdly, mainstreaming also occurred within the union through informal processes. While further research is needed to definitively determine the impacts, there may have been a flow on effect within the union, further mainstreaming equality issues. This union's negotiators were aware of bargaining being conducted by their colleagues, particularly those in comparable agencies. The successful increase in carer's leave provisions and the bargaining tactics used for Publicorg may therefore flow on to other negotiations and agreements (union interview, 10 November 2008).

Finally, family provisions were mainstreamed externally by the union's adoption and promotion of extended paid maternity leave. This mainstreamed the issue of paid maternity leave not only throughout workplaces, but also through society more generally. This should not be underestimated, as it not only added to the groundswell of community support for the introduction of paid maternity leave, but also increased support for a higher benchmark, resulting in discussions revolving around the provision of six months paid maternity leave, rather than the 12 to 14 weeks which had been the APS standard for so long.

CONCLUSION

This paper has focused on a case study of bargaining in an APS agency to show how a form of equality bargaining is increasing the family provisions available to employees. This is particularly important in a female-dominated agency, since research has shown that it is often female dominated agencies which lack bargaining power. A union which places a high priority on bargaining for family provisions, with active and committed members, can successfully negotiate for improved family provisions. This case study has shown that equality bargaining is also achieved through gender mainstreaming, which could also flow on to other APS bargaining. These initiatives also then feed into the wider movements occurring in enterprise bargaining in Australia. It is also apparent however, that achieving gains through bargaining is time and labour intensive, that gains are somewhat piecemeal and can be based on quite fragile grounds. The corollary however, is that community support and increased industry benchmarks provide a strong platform to increase family provisions.

Finally, this case study demonstrates that equality bargaining is occurring in Australia, although this terminology is not used. Equality bargaining occurred within the case study through a centralised union claim which incorporated gender equality issues. However, there is still the capacity to incorporate gender into more traditional bargaining items, which would truly achieve gender equality mainstreaming and which could result in the transformation of bargaining not only in the APS, but throughout Australian workplaces.

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