Part Two

Chapter Five

The Community and Public Sector Union and PublicOrg: Bargaining for equality within a decentralised environment

‘...in their interests and in our interests for different reasons…’

(Interview with union negotiator, 23 September 2008).

5.1 Introduction

In July 2008, the Community and Public Sector Union (CPSU) presented the management of a large public service agency (known here as ‘PublicOrg’) with a fully researched, comprehensive and detailed log of claims, to initiate bargaining for a workplace agreement which was due to expire in December 2008. The union’s claim included twenty-eight weeks paid parental leave, and expanded carer’s leave. In response to this claim, PublicOrg presented the CPSU with a very short ‘agenda’, which indicated that the organisation would provide an ‘appropriate’ pay rise, and also wanted to address staff attendance issues. This lead to the management representatives proposing reductions to the personal/carer’s leave. This proposal propelled CPSU members in PublicOrg to engage in collective action – the first time many had done so, in a workplace not noted for its militancy. How this came about reveals the strength and motivation of a group of workers to retain an important family provision.

The background to these negotiations is complex, with layers of regulation, overlaid with political ideology. The Australian Public Service (APS) is a unique collection of organisations, with different demographics across agencies and differing levels of family provisions. This has arisen because of a complex interaction between different industrial instruments and union strategies in response to the regulatory changes. This chapter provides a brief history of regulation governing the APS, documenting the impacts of a series of reforms and union responses. The negotiations are then detailed, highlighting how the CPSU negotiated and campaigned for key family provisions,
particularly increased parental leave and carer’s leave and considers whether a form of equality bargaining was undertaken by the union and the facilitative or inhibitive factors which impacted on any equality bargaining undertaken.

5.2 Regulating wages and conditions in the Australian Public Service

As with the private sector, enterprise bargaining gained pace in the APS from the early 1990s. However, regulatory changes have impacted on the provision of wages and employment conditions more so in the public service than in many other sectors (Cooper and Ellem, 2008, 540). This section details these changes and their impact on the level and availability of family provisions.

In 1996, conditions of employment in the APS were predominantly centrally regulated through one APS-wide award, one enterprise agreement, the Public Service Act 1922, the Industrial Relations Act 1988 and legislation on specific conditions, including the Maternity Leave (Commonwealth Employees) Act 1973 (Molloy, 2007, 82-83), which provided twelve weeks paid maternity leave to eligible employees. From 1996, as with the rest of Australia, processes for determining wages and conditions in the APS became increasingly decentralised. Indeed, the Australian government pursued its policy of decentralisation first within the APS, for its own employees (O’Brien and O’Donnell, 2002, 104). The Workplace Relations Act 1996 also fostered ‘a deliberate strategy of individualising employment relationships across the APS and weakening the influence of unions’ (Forsyth and Weeks quoted in O’Brien and O’Donnell 2008, 638). The marginalisation of unions was felt by the CPSU, which faced increased difficulties in workplace organising and hostility from managers (O’Brien and O’Donnell 2008, 640; Cooper, 2001, 425), thereby making enterprise bargaining more difficult.

Further changes specific to the APS were introduced by amending the Public Service Act to enable agency heads to determine the terms and conditions for their employees (Molloy, 2007, 104). This legislation aimed to align APS employment conditions with the private sector by enabling agency heads to act as employers (Pearce, 2008, 16). The government still retained central control over the outcomes of bargaining, however, by issuing ‘policy parameters for agreement-making’, with which agencies were required to abide (Molloy, 2007, 93). These parameters included guidelines on
both the content of, and types of statutory agreements which agencies could seek to make, freedom of association, dispute resolution, retrenchment and remuneration (Australian Government, 2006a).

In 2005 the Coalition government introduced the *Workplace Relations Amendment (Work Choices) Act*, which became operative in March 2006. As discussed in Chapter Four, this legislation was extremely controversial, with unions and researchers concerned that some employees would experience reductions to wages and conditions, concerns ultimately realised (Cooper and Ellem, 2008, 544-45). *Work Choices* further restricted union access to workplaces and increased individual bargaining, including for the APS (O’Donnell and O’Brien 2008, 640-41; Cooper and Ellem, 2008). It is arguable, however, that the major reforms to the APS had already occurred by the time *Work Choices* was introduced. Enterprise bargaining was entrenched and the APS was regulated by over ninety agreements and 750 different pay rates by 2007 (Jones, undated) covering 160,000 employees (Australian Public Service Commission, 2008, 2).

This fragmentation was also evident in the level of family provisions available in the APS, which varied between agencies. For example, some agencies provided fourteen weeks paid parental leave, others provided the statutory minima of twelve weeks maternity leave (CPSU, 2008a) as per the *Maternity Leave Act* 1973. In 2008, the union, along with many others, made a submission to the Productivity Commission’s inquiry into paid parental leave and appeared at the associated hearings (CPSU, 2008a; Productivity Commission, 2008b). The CPSU stated that ‘bargaining is a piecemeal response to a society wide issue’ (CPSU, 2008a, 3). Further, the union identified factors which contributed to ‘gains made through bargaining’, which were the ‘industrial strength of the union within a particular agency, the political circumstances of the time, and the gender balance in an agency’ (CPSU, June 2008a, 3). However, the union did not specify whether bargaining in a male-dominated or gender-balanced agency was more likely to result in increased paid maternity leave than bargaining in a female dominated agency.

The Australian Labor Party was elected in November 2007, with a different workplace relations philosophy. The new government introduced a bargaining
framework to facilitate ‘genuine’ bargaining in the APS, requiring ‘all participants to bargain and consult on a cordial and professional basis’ (Australian Government, 2008, 14) and agency heads to ‘engage genuinely with employees and their representatives’ (Australian Government, 2008, 5). This represents a marked change from the previous bargaining guidelines, which emphasised ‘direct’ relations between employers and employees and did not envisage a role for unions. The CPSU welcomed the new bargaining guidelines, stating that ‘collective bargaining is now at the centre of the [bargaining] process’ (Workplace Express, 2008a). The new guidelines also incorporated ‘flexible retention and attraction initiatives’ which encouraged agencies to work with employees and unions to consider how workplace agreements could incorporate family provisions to the benefit of both parties (Australian Government, 2008, 20). This was in contrast to previous guidelines which did not include any work and family issues, beyond reiterating the entitlements in the Maternity Leave Act.

5.2.1 Union response to a changing industrial relations landscape

In response to the changes resulting from the introduction of the Workplace Relations Act 1996, which as discussed, included fragmentation of the level of employment conditions and increased difficulties for unions accessing workplaces, the CPSU adopted three strategies. Firstly, the union reconsidered the organisation’s structure and member involvement. If the union was to experience difficulties in accessing members, then new organising strategies would need to be developed.

After 1996, the union therefore determined to change its structure (O’Brien and O’Donnell, 2008, 641). Rather than being organised according to geographic regions aligned with state borders, the union structure changed so that union staff became responsible for a group of workplaces with similar functions. APS agencies were organised into divisions, overseen by Secretaries who were union officials, and supported by Section Councillors within each workplace (O’Brien and O’Donnell, 2008, 641-42). The new structure ‘enabled resources to be shifted to workplace organizing and to bargaining’ (O’Brien and O’Donnell, 2008, 642) and aligned union activities with a government focus on enterprise bargaining. This structure later changed slightly, so that the leadership team of the CPSU consisted of elected Section Secretaries who were APS employees. About sixty section Secretaries, plus seven
senior elected union officials collectively made up the ‘Governing Council’, which determined the union’s direction (CPSU, 2009). The Section Secretaries were then supported by a group of workplace Section Councillors, and delegates supported the Section Councillors.

The second change initiated by the union was to increase resourcing to delegate structures (O’Brien and O’Donnell, 2008, 641). The restructure enabled a more strategic approach to organising, with a shift in focus away from recruitment to campaigning and empowering members (Cooper, 2001). The union moved to an ‘organising’ model as advocated by the ACTU, away from the ‘servicing’ model of unionism, where union activities occur outside the workplace and officials provide ‘services’ to members (Hanley and Holland, 2003, 4). Cooper states that member involvement in these changes was minimal (2001, 431). However, the longer-term effect was that member involvement did increase as a result of these initiatives, including in the development of bargaining claims and in negotiations (interview with union negotiator, 8 August 2008). This is depicted in Figure 5.1. The union also established a unit of advocates, who specialised in bargaining (interview with union official, 8 August 2008).
The third response from the CPSU to the impact of the *Workplace Relations Act* was to develop a centralised, ‘core’ claim. In the early 2000s, the CPSU held internal discussions about the role of the union, and decided that it should move away from being just a ‘bargaining agent’ to becoming a more proactive union (interview with union official, 8 August 2008). This decision resulted in union staff and the Governing Council developing an ‘Agreement Making Framework’ (referred to by the union as its ‘core claim’), which included gender equity items (interviews with union negotiators, 13 September 2007; 8 August 2008). The core claim was also developed to counter the decentralisation of the APS, with the aim that it would provide consistency across all agency negotiations (interview with union official, 8 August 2008). The core claim formed the basis of all logs of claims for negotiations, although claims also included bargaining items specific to individual agencies.

In 2008, the core claim included a range of terms and conditions, including wages, career development, work and family issues, performance, redundancy, environmental issues and union representation (CPSU, 2008b), as shown in Table 5.1. Specific family provisions included requirements to ensure that working hours would not be increased, and that managers were required to take into account caring responsibilities and work/life balance when establishing working hours (CPSU, 2008b, 2).

The core claim also aimed to improve two essential family provisions – carer’s leave and paid parental leave. The carer’s leave provision in the core claim did not specify a quantum, instead focusing on ensuring the provision was an enforceable entitlement. The carer’s leave claim required that this leave be expressed as an employee entitlement, written reasons be provided if denied, and where denied, managers were required to consider alternatives which may have addressed the employees’ work/life balance requirements (CPSU, 2008b, 4). The core claim also included increased parental leave provisions. The claim was for fourteen weeks paid maternity leave, with a further fourteen weeks for the primary care-giver (taking it to a total of 28 weeks), six weeks paid supporting partner leave and adoption leave, and up to five years unpaid parental leave (CPSU, 2008b).

As well as increasing the quantum of paid maternity leave in the core claim, in 2008 the CPSU resolved to negotiate for a staged increase in paid maternity leave, to
twenty-six weeks by 2013. This was determined by the union’s Governing Council at its annual conference in March 2008 and simultaneously announced by the CPSU Secretary (Australian Broadcasting Corporation, 2008a). As discussed in Chapter Four there was a great deal of public discussion around the need for a paid maternity/parental leave scheme at this time, with the Productivity Commission conducting an inquiry, and unions and women’s organisations campaigning and advocating for a national paid maternity leave scheme. In this political and campaign environment, the CPSU Secretary publicly announced that the union would be bargaining for increased paid maternity leave provisions, giving further impetus to the national paid maternity leave campaign. The increased paid maternity leave claim was based on a need to modernise the paid maternity leave arrangements in the APS, which essentially had not changed for thirty-five years (CPSU, 2008c). The CPSU then, had an significant agenda to pursue through bargaining. The Australian government however, did not welcome the claim, with media reports stating that the government viewed it as being unaffordable (Macdonald, 2008).

5.3 Family provisions in the Australian Public Service

Family provisions were contained in a range of industrial instruments for APS employees, including legislation, awards, collective agreements and human resource policies. Table 5.1 outlines the family provisions available to APS employees at the time of the negotiations. While a broad range of family provisions were available in the APS, this table only includes parental and carer’s leave, as these are the focus of this chapter.

At the time of negotiations, family provisions in the APS were above test case standards and legislated minima, as shown in Table 5.1 below. This continued the trend of the APS being at the forefront of providing family provisions, since the landmark Maternity Leave Act was introduced in 1973 which provided APS employees with twelve weeks paid maternity leave. This occurred when the majority of Australian workplaces did not even provide unpaid maternity leave, let alone paid maternity leave (ACTU, 1978). The APS award also provided employees with ten days for personal/carer’s leave (cl 28.2.1, Australian Public Service Award, AP766579), however, at the time of the negotiations, the standard in APS collective
agreements was around eighteen days a year (interview with union negotiator, 7 July 2008).

Table 5.1: Family Provisions in the Australian Public Service: March 2008

<table>
<thead>
<tr>
<th>Industrial Instrument</th>
<th>Parental Leave</th>
<th>Personal/Carer’s leave</th>
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<tbody>
<tr>
<td><strong>Maternity Leave Act, 1973</strong></td>
<td>12 weeks paid maternity leave¹</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>52 weeks unpaid leave²</td>
<td></td>
</tr>
<tr>
<td><strong>Australian Public Service Award, 1998</strong></td>
<td>12 weeks paid maternity leave³</td>
<td>10 days per year, cumulative⁶</td>
</tr>
<tr>
<td></td>
<td>52 weeks unpaid maternity leave⁴</td>
<td></td>
</tr>
<tr>
<td></td>
<td>10 days personal/sick</td>
<td></td>
</tr>
<tr>
<td></td>
<td>leave can be used as</td>
<td></td>
</tr>
<tr>
<td></td>
<td>paternity leave⁵</td>
<td></td>
</tr>
<tr>
<td><strong>APS collective agreements in 2008⁷</strong></td>
<td>12-14 weeks⁵</td>
<td>18 days a year, cumulative¹⁰</td>
</tr>
<tr>
<td></td>
<td>18 weeks emerging as new</td>
<td></td>
</tr>
<tr>
<td></td>
<td>standard⁹</td>
<td></td>
</tr>
<tr>
<td><strong>PublicOrg collective agreement in 2008¹¹</strong></td>
<td>12 weeks paid maternity leave¹², 52 weeks unpaid leave¹³</td>
<td>18 days a year, cumulative¹⁵</td>
</tr>
<tr>
<td></td>
<td>10 days paternity leave (to be taken out of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>personal/carer’s leave)</td>
<td></td>
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</tbody>
</table>

¹ s. 6(3), *Maternity Leave Act, 1973*  
² s. 6(1), *Maternity Leave Act, 1973*  
³ cls. 29, *Australian Public Service Award, 1998*  
⁴ cls. 29, *Australian Public Service Award, 1998*  
⁵ cls. 28.2.1, 30.4.2, *Australian Public Service Award, 1998*  
⁶ cls. 28.2.1(a). *Australian Public Service Award, 1998*  
⁷ *APS collective agreements* refers to common - or emerging - family provisions in the APS.  
⁸ CPSU, 2008  
⁹ Interview with union negotiator, 10 November 2008  
¹⁰ Interview with union negotiator, 7 July 2008  
¹¹ The ‘PublicOrg collective agreement’ refers specifically to provisions contained in this collective agreement, which may be different to entitlements generally available to the APS, resulting from enterprise bargaining.  
¹² cls. 43.2, *PublicOrg Certified Agreement, 2005-2008*  
¹³ cls. 43.1, *PublicOrg Collective Agreement, 2005-2008*  
¹⁴ cls. 38.3.3, *PublicOrg Collective Agreement, 2005-2008*
Even though the APS had generous family provisions compared to many private sector workplaces, for a range of reasons, the union considered it necessary to bargain for increased provisions. At the time of the negotiations, women comprised almost 58 per cent of the APS workforce and were concentrated in the lower levels (Australian Public Service Commission, 2008, 19; 23). The results of an annual survey of APS employees conducted by the Australian Government found that female APS employees were experiencing difficulties managing work and family responsibilities, with excessive workloads a problem in many agencies (Australian Public Service Commission, 2008, 140).

CPSU research also found that the existing twelve weeks of paid maternity leave was insufficient, and female employees were extending their leave by using additional forms of leave, such as annual leave (CPSU, 2008a, 6-7). The union had also identified that higher paid APS women faced difficulties in achieving a work/life balance due to longer working hours and a system of flex-time (whereby employees could work additional hours and then take time off at a later date) not being available to them. Lower paid women also experienced difficulties accessing family provisions, due to many of them being employed on short, fixed-term contracts which rendered them ineligible for some family provisions, such as paid maternity leave (Donnelly, 2006, 13; 15; 17). APS employees appeared to be experiencing a range of problems combining work and family responsibilities, which differed according to occupation and employment status.

5.4 Background to the negotiations at ‘PublicOrg’

The economic outlook at the commencement of bargaining in mid-2008 was generally positive. The APS was experiencing some skill shortages, notably for employees with specialist skills in information and communication technology and accounting (Australian Public Service Commission, 2008, 10). PublicOrg also stated that it was experiencing ‘challenges in attracting and retaining staff in a tight labour market affected by high employment levels and an ageing workforce’ (PublicOrg Annual Report, 2008, 58). This may have provided the union with some bargaining leverage. At an industry level, the new bargaining guidelines meant that the bargaining climate

may have been more favourable to the union than previously, where some agencies had refused to bargain with the CPSU (interview with union official, 8 August 2008).

5.4.1 PublicOrg

At the time of negotiations, PublicOrg had almost 6,000 employees, and over 80 per cent of them were women (PublicOrg Annual Report, 2007). Over a third of female PublicOrg employees worked in one of the 230 local branches throughout Australia which served the public. The agency employed a large number of comparatively low paid women, with a quarter of aged over fifty years old, and over 60 per cent earned $48,101 or less, significantly less than the average APS wage of $75,536 in 2007 (Australian Public Service Commission, 2008, 75).

These PublicOrg employees were engaged in direct service provision to the public, providing cash rebates. This was one of only two APS agencies which provided cash to the public. It was therefore different from the majority of APS agencies, which may have provided services, but did not provide direct financial assistance. One union organiser believed that the provision of cash to the public made the local PublicOrg branches an essential part of the community, resulting in staff valuing their work highly (interview with union organiser, 22 April 2010).

The management of PublicOrg were represented by a bargaining team consisting of one senior public servant who managed human resources, supported by line managers and human resource support staff. PublicOrg’s bargaining team consisted of two women and two men, however the sex of the negotiators did not appear to impact on the negotiations (interview with union negotiator, 12 June 2008). Non-union staff representatives were also present at the bargaining table, which was controversial, and set the tone for the negotiations. This is discussed shortly.

5.4.2 The Community and Public Sector Union

At the time of negotiations, the CPSU had approximately 60,000 members, who were engaged in a wide range of occupations, including clerical, engineering, communications, research and broadcasting. The majority of members were employed in the APS (CPSU, undated). The APS had been undergoing structural as well as industrial changes over the preceding fifteen years, with decreasing employment in
lower level service provision positions and a workforce which was becoming more skilled and undertaking more complex work (CPSU, 2008d, 5). The CPSU membership did not, however, reflect these changes, with most of its members being located in just ten agencies, which included PublicOrg (CPSU, 2008d, 6). Members were also geographically dispersed across Australia. While most APS agencies are located in Canberra, Australia’s capital city, only 20 per cent of CPSU members were in Canberra, with the rest located throughout the nation (interview with union negotiator, 29 March, 2008).

The union bargaining team included two paid union officials, and four unpaid workplace union officials. The paid officials included a lead negotiator who had legal knowledge and specialised in negotiating, and a lead organiser who was expert in campaigning. The lead organiser oversaw a team of organisers who: visited workplaces throughout the negotiations and kept members informed; acted as a conduit between members and negotiators; and also worked to increase member involvement and activism (interview with union negotiator, 11 June 2008). The remainder of the bargaining team consisted of elected union workplace officials, including the PublicOrg Section Secretary. The two negotiators were very experienced, each having been with the organisation for at least twenty-five years. They had also been active in the union and had participated in workplace negotiations over many years (interview with union delegates, 7 July 2008).

The union and the management had previously had a rather fraught relationship. According to the union, the management of PublicOrg was simultaneously both hostile and accommodating to the union as shown in the recent history prior to negotiations. The managers accommodated union activities, for example, by facilitating national meetings for the elected workplace union officials three times a year. Simultaneously, however, management prevented the union from sending emails to all members in the workplace, which was interpreted by union officials as a signal that they were discouraging collective union organising (interview with union negotiator, 11 April 2008).

The union then prepared to commence negotiations, against this background of new regulatory guidelines which may have facilitated more cordial workplace bargaining,
a historically ambivalent relationship between the bargaining parties, and a female-dominated, lower paid, workforce.

5.5 Preparing for negotiations

The union negotiators’ main aims for the negotiations were to, firstly, increase the level of family provisions in the agreement, and secondly, to increase the number of members and level of activism (interview with union negotiator, 1 August 2008). The union density in the organisation was approximately 35 per cent and members had not been industrially active prior to these negotiations (interview with union negotiator, 11 April 2008). The union viewed the negotiations as an organising opportunity which could assist these longer term goals (interview with union negotiator, 1 August 2008).

The two elements, of increasing conditions and members, corresponded to the roles of the two paid union negotiators; where one concentrated on the negotiations, and the other on member activism. As one of the organisers stated, ‘(c)ampaigning is the other side of bargaining’ (interview with union negotiator, 11 June 2008). This was a deliberate strategy by the union to have the negotiating and organising/campaigning activities aligned for these negotiations (interview with union organisers, 11 April 2008). These two strands of union strategy are followed throughout the negotiations.

The CPSU had a discrete written bargaining campaign strategy outlining the activities and goals for each month of the PublicOrg negotiations, developed by the union organisers directly involved in the negotiations. While the strategy outlined the aims of the campaign, this was not framed in terms of equality, although the union was cognisant of gender equality issues as these were included in the core claim, and therefore also in the log of claims for these negotiations. Instead, a more traditional approach was detailed, with a focus on increasing member activism and representation and developing effective communication and education structures (CPSU, April 2008, *PublicOrg Bargaining Plan*).

With the aims and the negotiating strategy in place, negotiations then commenced along two paths – one on the substantive aspects of bargaining, concentrating on claim development, and the other on campaigning and member development. These paths commenced in parallel, however, converged as the negotiations became more
heated, with the negotiations and the campaigning influencing each other. As will become clear, the union negotiators were the conduits for this, participating in bargaining, and then sparking the campaigning.

Development of union members began with two training sessions, with the first for union organisers to inform them about the underlying goals of the negotiations and their roles and responsibilities. The second was with elected Section Councillors, which included the bargaining team (interview with union negotiator, 12 June 2008). This training session outlined the duties and responsibilities of the negotiators, focusing on traditional bargaining techniques, such as ‘(a)lways maintain a united front’; ‘(n)ever reveal bottom line’, and ‘(d)o not give up anything without getting something in return’ (CPSU, May 2008, PublicOrg Agreement 08: Negotiating Team Protocols). Other Section Councillors formed a supporting communications team and their role was also outlined to them.

Organisers worked towards the twin goals of engaging members as well as developing the claim by conducting an informal verbal survey of members to determine what they wanted in their next agreement (CPSU, April 2008, PublicOrg Network Survey). This initial survey was followed-up with a more detailed written survey which listed a range of workplace issues, including union representation, pay and superannuation, and family provisions (CPSU, May 2008, PublicOrg Survey). The main issues identified by members were inadequate staffing levels and the need for increased wages (interview with union negotiator, 12 June 2008). The survey questions generally reflected the core claim, and agency specific issues were also included. The finalised log of claims therefore included, for example, the same percentage pay rise and increased parental leave provisions as the core claim, as well as items specific to PublicOrg, such as not linking the pay rise to a reduction in unplanned absences (CPSU, May 2008, PublicOrg Bargaining Feedback; CPSU, undated, PublicOrg Staff Bargaining Position 08).

As one of the first collective agreements to be made under the new bargaining framework for the APS, the PublicOrg agreement set an important precedent. The union accordingly directed considerable resources into these negotiations. Over the next two months from April to May 2008, hundreds of union meetings were held
across Australia to further develop the bargaining claim. The union negotiators attempted to have a meeting in every workplace, (interview with union negotiator, 12 June 2008). Organisers who had been at these meetings, or in contact with activists then provided feedback to the lead organiser. The claim development continued, with union negotiators comparing the survey results and information from workplace meetings with the core claim. Agreements from comparable enterprises were used as benchmarks in the claim development, drawn from a database which was used by organisers to formally report their bargaining outcomes (interviews with union negotiators, 24 June 2008; 30 June 2009). Organisers were also aware of bargaining being conducted by their colleagues, particularly those in comparable agencies, and so could assess emerging claims and standards and include those considered appropriate (interview with union negotiator, 27 June 2008).

A list of bargaining items was compiled from these disparate sources, a task of considerable magnitude. Those items which were given priority were those in the core claim (including family provisions, particularly paid maternity leave) and those which would attract members’ and potential members’ attention, such as increased wages (interview with union negotiator, 24 June 2008). In June 2008, the draft claim was provided either through fax or via a union organiser to 230 workplaces for staff endorsement. All staff, not just union members, were encouraged to endorse the claim (CPSU, June 2008, PublicOrg Agreement 2008: Staff Bargaining Position Vote). The union received 1,300 endorsements out of a total of approximately 2,000 union members, which the union negotiators considered a very good response (interview with union negotiator, 7 July 2008).

5.5.1 Existing provisions and the union’s claim

The union’s claim contained the core claim, although some elements were modified as the claim also contained enterprise specific bargaining items, and these are detailed in Table 5.2. At the time of the negotiations, PublicOrg had twelve weeks paid parental leave, making it one of the few large agencies which did not provide fourteen weeks (interview with union negotiator, 8 August 2008). The core claim for paid parental leave was fourteen weeks, plus a further fourteen weeks for the primary carer, however, the PublicOrg union negotiators adopted a more pragmatic position of negotiating for only fourteen weeks paid maternity leave, as they believed that this
was more achievable (interview with union negotiators, 10 November 2008). The twenty-eight weeks paid parental leave was a long-term, aspirational goal, and the negotiators firstly wanted to secure fourteen weeks paid parental leave to bring PublicOrg in line with other agencies (interview with union negotiator, 11 April 2008).

The organisation did not provide any paid paternity/supporting partner leave, with parents required to use personal/carer’s leave for this purpose. The claim also included paternity leave as a stand alone entitlement (CPSU, undated, PublicOrg Staff Bargaining Position 08 – Summary), which would effectively increase the amount of carer’s leave available, as employees would not need to use carer’s leave for paternity leave purposes. PublicOrg also provided six weeks paid adoption leave and the core claim was for this leave to be ‘consistent with advances for primary care giver leave’ (CPSU, 2008b, 3). This was also included in the union’s claim.

### Table 5.2: Comparison of APS Conditions, CPSU Core Claim Family Provisions and PublicOrg Claim

<table>
<thead>
<tr>
<th>APS standard</th>
<th>Core claim</th>
<th>PublicOrg Claim</th>
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<tbody>
<tr>
<td>N/A</td>
<td>Work and family provisions require reasons for refusal to be provided in writing, including for carer’s leave.</td>
<td>As per core claim.</td>
</tr>
<tr>
<td>Paid Parental Leave</td>
<td>14 wks paid maternity leave plus 14 weeks primary caregiver leave. 6 wks pregnancy leave. Adoption leave 'consistent with advances for primary care giver leave'.</td>
<td>28 weeks presented to management representatives but underlying aim of 14 weeks paid maternity leave. Paternity leave as stand-alone entitlement ie, not to be taken from personal leave. As per core claim.</td>
</tr>
<tr>
<td>Carer’s leave</td>
<td>Carers leave for caring for children as well as elderly as well as for chronic illness (ie expressed broadly to inc non-dependents and also for unforeseen care).</td>
<td>As per core claim, plus carer’s leave for unforeseen care.</td>
</tr>
</tbody>
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16 CPSU 2008(b), 3  
17 CPSU 2008(b), 3  
18 CPSU 2008(c), 3
The other main family provision of the claim was carer’s leave. The union’s claim for personal/carer’s leave incorporated the core claim but also sought to expand the definition of carer’s leave to include caring for dependents who required unforeseen care, but who were not sick. The current clause limited taking leave to care for sick dependents, and could not be used for other caring purposes, such as caring for children on a school’s pupil-free day. The claim also included an ability to use personal leave to care for non-dependents (interview with union negotiator, 27 June 2008). PublicOrg provided eighteen days per year personal/carer’s leave, cumulative., According to the union, however, due to an error or oversight in previous negotiations new starters to the organisation were credited with eighteen days, and then also accumulated eighteen days throughout the year, accruing thirty-six days personal/carer’s leave in their first year of employment.

The claim also included a range of other family provisions, including that employees’ family responsibilities be considered when organising working hours, that the union and the agency jointly examine mechanisms to facilitate work-life balance, and that employees be compensated for travelling for work for its impact on an employee’s family life. The core claim also included other equality items beyond family provisions, including for pay equity, additional entitlements for mature aged employees, as well incorporating general non-discrimination principles (CPSU, 2008b). While this research does not focus on these latter claims, they are included here to indicate the depth and breadth of equality issues included in the union’s core claim. The claim also included a range of more traditional items, including claims for learning and development to provide employees with adequate training, union freedom of association, clauses around redundancy, performance assessment and travelling.
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Pre-Negotiations</strong></td>
<td><strong>Negotiations</strong></td>
<td><strong>Negotiations</strong></td>
<td><strong>Negotiations</strong></td>
</tr>
<tr>
<td>Planning undertaken.</td>
<td>Union members surveyed.</td>
<td>Negotiations on process and composition of bargaining parties undertaken.</td>
<td>Union claim endorsed by members; presented to employer. Included:</td>
</tr>
<tr>
<td>Union member networks established.</td>
<td></td>
<td></td>
<td>- 28 weeks paid parental leave</td>
</tr>
<tr>
<td>Claim developed.</td>
<td></td>
<td></td>
<td>- paternity leave as a separate form of leave</td>
</tr>
<tr>
<td>Members trained for negotiations.</td>
<td></td>
<td></td>
<td>- carer’s leave for wider range of purposes than was currently available.</td>
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<td></td>
<td></td>
<td></td>
<td>Employer’s ‘agenda’ presented to union, included:</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>- an unquantified pay rise</td>
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<td>- addressing attendance</td>
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<td></td>
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<td>- paternity leave as separate leave.</td>
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<tr>
<td></td>
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<td></td>
<td>Employer then provided ‘proposition’ which detailed reductions to personal/carer’s leave from 18 to 10 days plus 5 days non-cumulative leave.</td>
</tr>
</tbody>
</table>

Union organisers visited workplaces throughout period; bulletins issued

**Legend**

| Union collective activity | Negotiations | Agreement |

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19 Table compiled from interviews with union negotiators and officials throughout negotiations and bulletins to members. See Appendix 3.2 for full details.
Table 5.3: Timeline of CPSU/PublicOrg Negotiations (cont.)

<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>Escalation and resolution</strong></td>
<td><strong>Agreement Finalised</strong></td>
<td></td>
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</table>
| Union poll on employer's personal/carer's leave proposal. | Union members engaged in collective action in opposition to personal/carer's leave proposal. | Union members' meetings held on proposed agreement. | Agreement approved by union members. Included:  
- 4.3% p.a. pay rise.  
- additional 2 weeks paid maternity leave (to 14 weeks)  
- paternity leave as stand alone entitlement  
- additional 2 weeks adoption leave (to 8 weeks). |
| Training held for union activists. | | | |
| Union distributed bulletins calling for members to take industrial action; organisers visited workplaces. | | Union members surveyed on response to pay rise and personal/carer's leave offers. | |
| **Negotiations continued.** | Employer provided full ‘package’, included:  
- additional 2 weeks paid maternity leave (to 14 weeks),  
- additional 2 weeks’ adoption leave (to 8 weeks)  
- changes to the salary structure  
- 4.3% annual pay offer | Wages agreed; parties agreed on proposed new agreement. | |
| Agreement on clauses, such as learning and development, freedom of association. | Agreement on other non-family provisions claims finalised, such as rostering, wages reclassification. Agreement on carer's leave – reduction from 18 to 15 days a year plus 3 non-cumulative 'special leave' days. New starters to not receive 18 days carer's leave on commencement. | | |

Union organisers visited workplaces throughout period; bulletins issued
5.6 Undertaking formal negotiations

5.6.1 Negotiations commence

Formal negotiations commenced in June 2008 with a discussion of administrative matters related to the negotiations, such as the facilities which were to be made available to the union and meeting dates. At the following meeting in July 2008, both bargaining parties presented documents – the union negotiators presented a fully developed, researched log of claims; the management negotiators presented an ‘agenda’ consisting of a few dots points which combined principles with specific bargaining items, as discussed shortly. This was the first of three documents provided by the managers over the course of the negotiations which contained a range of proposals or claims, with varying levels of detail. Later in the same month, the managers provided their second document – a ‘proposition’, which contained details of proposed leave entitlements (PublicOrg email to staff, 31 July 2008). In September 2008, the managers released the third document, a full claim, three months after the commencement of formal negotiations and the union providing its claim (PublicOrg, undated, PublicOrg’s 2008 to 2011 Collective Agreement Package). A timeline in Table 5.3 illustrates the process of negotiations.

Going back to the first employer claim, the managers’ July 2008 agenda was extremely short and did not contain claims. Instead it outlined principles, such as ‘provide for an appropriate pay increase’ and ‘(a)dress a range of concerns for staff and management in addressing attendance’ (PublicOrg, undated, 2008 PublicOrg Australia Collective Agreement Agenda). Management negotiators considered the agency had an unacceptably high rate of unplanned absences. The union negotiators were concerned about this management item as it could indicate that the managers wanted to reduce personal/carer’s leave, which could impact negatively not on those misusing personal leave, but mothers using the leave as carer’s leave (interview with union negotiator, 7 July 2008). The agenda, however, also contained a ‘sweetener’ for staff, by indicating that improved paid paternity was possible. PublicOrg proposed ‘addressing’ paternity leave as a separate type of leave (which would, in effect, provide employees with ten days paternity leave, which would not need to be taken from personal leave).
At this stage the management negotiators were keeping quiet on their ‘bottom line’ and declined to offer a fixed amount pay increase. The union negotiators reported that the managers stated that ‘everything is a package and the cost of the package needs to be looked at’ (interview with union negotiator, 7 July 2008). The union negotiators were not happy with this and suspected ulterior motives, or incompetence: the PublicOrg bargaining team either had a hidden agenda or ‘didn’t know what they’re doing’ (interview with union negotiator, 7 July 2008). The concerns that they were trying to mislead the union negotiators were to become a recurring theme of these negotiations.

While the management negotiators provided a minimal claim, the union claim was extremely detailed, at almost eleven pages long, and contained principles as well as specific bargaining items (CPSU, undated, Union Collective Agreement Making Claim – PublicOrg Australia). The union negotiators presented their claim in July 2009, and the managers reportedly responded negatively, supported by few reasons, although there was initial agreement on the issue of paternity leave (interview with union negotiator, 7 July 2008). The union negotiators reported that the managers appeared to be a little overwhelmed at the length of the union’s log, however, the union negotiators aimed to have as much detail in the agreement as possible, so that provisions would be enforceable (interview with union negotiator, 7 July 2008).

The management negotiators had revised their claim by the end of the July 2008, and their second claim – or ‘proposal’ – contained items beneficial to employees, including an additional two weeks paid maternity leave and two weeks paid paternity leave. According to the union negotiator, the management representatives did not provide reasons why they had agreed to increase paid maternity leave (interview with union negotiator, 1 August 2008). However, one of the union negotiators believed:

‘...they don’t have a choice. It’s an APS standard and if they don’t follow that in a majority female workforce...it was a bit of a carrot too, them trying to say ‘Oh look, aren’t we good?’ They really didn’t have a choice because if you look at the APS now, they’re in the minority’ (interview with union negotiator, 1 August 2008).

Subsequently, the managers did provide a reason: they had decided to increase parental leave as part of a strategy to create ‘a positive attendance culture’, which
included enabling staff to better manage work and family commitments (PublicOrg email to staff, 3 September 2009). In regards to paternity leave, however, the union negotiators believed this proposed entitlement also assisted the managers in a more pragmatic way:

‘...(t)hey had this as part of their claim to have paternity leave as a standalone entitlement, and really what they’re trying to achieve is to reduce their personal leave. So for them, taking it out of personal leave and having it as a separate leave category so paternity leave doesn’t fall into unplanned leave, will make their reporting look better...It’s in their interests and in our interests for different reasons (interview with union negotiator, 23 September 2008).

It was at this point that the trade off became obvious – the managers’ position on paternity leave was contained within a wider agenda which required trade-offs from the union, namely, a significant reduction in personal/carer’s leave (PublicOrg email to staff, 31 July 2008). The managers proposed reducing the amount of personal leave from eighteen to ten days a year, to introduce a new category of ‘special leave’ of five days a year, non-cumulative, for special circumstances including support for family members who were not ill (such as for child care in an unforeseen emergency), which would need to be agreed by the agency head and supported by written evidence (CPSU, July 2008, You Be the Judge: Management’s leave proposal).

From the union negotiators’ perspective, this would therefore have reduced the amount of personal/carer’s leave available to employees, increased compliance activities as employees would need to show documentary evidence before approval was granted, and increased managerial prerogative, as managers would need to approve ‘special’ leave and view supporting evidence. The proposed latter arrangement was quite different from the existing requirements for personal/carer’s leave, as evidence was not automatically required (PublicOrg Certified Agreement, 2005-2008, cl. 38.3).

Negotiations on personal/carer’s leave continued throughout July 2008. The union negotiators had a specific bargaining strategy for this issue – they deliberately did not discuss the employer’s position, instead focusing on their claim. This was not received well by the PublicOrg managers, and one even reportedly raised his voice at a union negotiator who would not be drawn into discussing the issue unless the
management representatives provided evidence to the union to support their proposal (interview with union negotiator, 30 July 2008). This strategy ensured that it was the union’s, and not the managers’ agenda which was the focus of negotiations.

Late in July 2008, the union issued a bulletin about personal/carer’s leave. This outlined PublicOrg’s proposal and contrasted this with ‘your union’s positive agenda’. The union negotiators continued to highlight their perceptions of management unreasonable in the next bulletin, which stated:

‘(w)e have told management that we are only willing to discuss strategies to reduce unplanned leave that are backed up with evidence and where the strategy does not undermine public service standards’ (CPSU, July 2008, You Be the Judge: Management’s leave proposal).

These early bulletins set the tone for the union’s position. Not only was this communicated to members, but PublicOrg’s management negotiating team also had access to these as they were freely available on the union’s website.

At this point there was some agreement between the bargaining parties on parental leave, however, they appeared to be moving towards a dispute over personal/carer’s leave. The relationship between the two parties was also antagonistic, further indicating that a major disagreement was likely.

5.6.2 Escalation and dispute

The managers’ carer’s leave proposal signalled the start of a new phase of the negotiations, as according to the union negotiators, this claim generated extreme hostility from members and other employees. This opposition stemmed not only from employees not supporting reduced conditions but also because these female employees may have needed carer’s leave more than other female APS employees. Women in service provision agencies such as PublicOrg tended to have a higher level of caring responsibilities than other groups of APS female employees (Donnelly, 2006) and so PublicOrg employees needed to at least maintain the current level of carer’s leave.

This issue galvanised the union negotiators, who then commenced undertaking research and organising a campaign to demonstrate union members’ opposition to the
management proposal to reduce personal/carer’s leave. At the start of this phase, in August 2008, the union conducted a widespread poll of members to gauge reaction to the personal/carer’s leave proposal. One thousand, two hundred members responded, with 97 per cent rejecting the proposal (interviews with union negotiator, 11 August 2008). This was only two hundred votes less than the number of votes approving the union’s claim, indicating the depth of feeling on this issue. This result was conveyed to the management negotiators at the following meeting (interviews with union negotiator, 11 August 2008).

Union members were asked by the union negotiators to suggest measures which could be taken to reduce the incidence of unplanned personal/carer’s leave. Their comments are revealing about the workplace culture:

‘[a] happier working environment would only be through more staff, but people don’t want to work here. Low wages and no incentives to stay, you can’t move forward in [PublicOrg].’

And:

‘[PublicOrg] should learn how to manage and show trust in their employees to do the right thing. My observation with other staff is that they are treated as naughty school children. Constantly having statistics and percentages given about attendance – it would be nicer to focus on our work and clients – the Australian public. [PublicOrg] are trying too hard to be like a private corporation – we are public servants who work diligently [for] the APS.’

Despite further negotiations, the personal/carer’s leave issue was not immediately resolved. The union negotiators then decided to mobilise and act upon members’ dissatisfaction, and engaged in a sustained, multi-faceted campaign. A bulletin was released highlighting the 97 per cent result and encouraged employees to join the union (CPSU, 12 August 2008, PublicOrg: 97% Reject management’s leave proposal; interview with union negotiator, 12 August 2008). Further bulletins encouraged members to engage in a week of collective action, which would include wearing stickers and holding morning teas to demonstrate solidarity and highlight their opposition to the proposal (CPSU, 26 August 2008, PublicOrg: Ready to show you care?). Organisers were also active in workplaces, generating support through talking to members (interview with union negotiator, 26 August 2008). The union also invested further resources in activists by providing further training on how to communicate with members, ‘so contacts can talk to people to move them to take
action’ (interview with union negotiator, 11 August 2008). Training was held in every state and regional centre over three weeks (interview with union negotiator, 11 August 2008).

Union negotiators had concerns that the collective action would not be successful. Their experience in other workplaces had shown that engaging in industrial action was a gendered activity, with employees in gender balanced or male-dominated workplaces generally being more willing to undertake industrial action than employees in female-dominated agencies (interview with union negotiator, 10 November 2008). According to a union negotiator, PublicOrg employees were long-term employees who ‘[didn’t] want to ask for too much’ and who were also industrially vulnerable due to working in small branches with fewer union members and lesser feelings of solidarity compared with PublicOrg’s state and National office (interview with union negotiator, 11 June 2008). These were employees who were predominantly middle-aged mothers, comparatively lower paid, working in small branches in suburban shopping centres – hardly the stereotypical image associated with union militancy. However, the proposed reduction in personal/carer’s leave, which was so important to members because of their family responsibilities, angered them enough to ensure that the vast majority would engage in collective action.

Negotiations between the parties continued throughout August 2008, with the union negotiators organising members and the management team further considering the union’s claim and developing their own full claim. A senior manager also emailed staff, reiterating their concerns that PublicOrg was in the top twenty of ninety agencies for having the highest personal leave usage, and that they were further considering their personal/carer’s leave proposal (PublicOrg email to staff, 25 August 2008). Nevertheless, some progress was made in negotiations, on learning and development clauses, and freedom of association for union members (interview with union negotiator, 25 August 2008). This was not enough, however, to prevent staff from taking collective action.

In September 2008, members gathered their courage and wore stickers highlighting the carer’s leave issue, despite a request from senior management not to wear the stickers in public areas (email from union negotiator, 4 September, 2008). Union
members also held morning teas for all staff to highlight what they perceived as an unjust proposal from management: which was to reduce the amount of personal/carer’s leave from eighteen to ten days and introduce a new category of special leave which required greater compliance activities from employees. These actions were designed by the union organisers to be fun and not aggressive, to encourage maximum participation. The union also held a photo competition for the best photos of members taking collective action, which were displayed on the union’s website. This further enhanced the acceptable nature of the action while also increasing solidarity. The majority of branches participated in the action and generally everyone in a branch, including non-union members, participated (interview with union negotiator, 12 September 2008). That the action was widespread indicates the importance that members – and staff – attached to the personal/carer’s leave issue.

For employees who did not have a history of industrial action, the union negotiators were pleased:

‘(I) was hoping [the action] would be this successful...The activists there made two hundred cupcakes...with [PublicOrg’s corporate colours] icing and handed them out to everyone as they came to work and there was about two hundred helium balloons throughout the building...This was from the same workplace where a couple of months ago...people wouldn’t sit at the same table as the union, and they were making jokes about management hiding in the Coke machine’ (interview with union negotiator, 12 September 2008).

The action also benefited the union as it not only increased member involvement, it resulted in new members. Although the union negotiators did not know the exact number, at the height of the industrial activity twenty members a week were joining, which was considered to be very high (interview with union negotiator, 3 October 2008). The collective action also provided the union with an opportunity to raise awareness about associated claims which were not as straightforward and potentially more difficult to ‘sell’ to members, such as the claim that a supervisor was to provide the reasons for a refusal of personal/carer’s leave in writing (interview with union negotiator, 11 August 2008). Indeed, union negotiators were content for this issue to remain unresolved in the short term as the issue generated member commitment and activism, which could also be used to campaign for other issues.
5.6.3 Resolution and settlement

The collective action and depth of opposition to the personal/carer’s leave proposal did achieve its aims, as a breakthrough in negotiations was made in September 2008 with the management team revising their position. The new position eventually saw a return to providing eighteen days a year personal/carer’s leave, which also included three days non-cumulative ‘special’ leave to enable employees to care for non-immediate family and to respond to household emergencies. The union also amended its position so that the amount of personal leave to be credited to new starters on commencement was reduced to five days (interview with union delegate, 26 September 2008), a trade off that the union negotiators foresaw early in the negotiations and one which did not disadvantage existing members. This was also supported by existing members (interview with union negotiator, 7 July 2008). PublicOrg management accepted this proposal.

This new personal/carer’s leave clause effectively gave the union negotiators the conditions they were seeking – existing staff did not face a diminution in leave, and could also use the leave for child care and caring for non-dependents. This position benefited both parties – the employer secured a reduction in the amount of personal leave available (for new starters), and the union won an entitlement allowing employees to use the leave for a wider range of purposes than contained in the previous agreement, as well as reasons for a refusal to be provided in writing to the employee, upon request. As well as these concrete gains, the collective action galvanised members, many of whom were unused to participating in union activities, let alone engaging in collective action. The collective action also provided an organising opportunity for the union. The action also had a wider impact, however – of changing the nature of negotiations, which is discussed in the next section.

5.6.4 A turning point

Not only was the collective action effective in resolving the impasse over the personal/carer’s leave proposal, it also changed the nature of the negotiations from being hostile and low trust to somewhat more cordial: ‘they really did start negotiating’ (interview with union delegate, 26 September 2008). As part of this new approach, the management negotiators gave a presentation to the union negotiators on PublicOrg’s strategic directions and also provided a comprehensive claim. The
September 2008 ‘package’ from PublicOrg included an additional two weeks paid maternity leave (from twelve to fourteen weeks), and an additional two weeks’ adoption leave (from six to eight weeks) to improve employees’ work and family balance. The package also included changes to the salary structure which would benefit employees and a 4.3 per cent annual pay offer (CPSU, undated, PublicOrg’s 2008-2011 Collective Agreement Package), which the union considered ‘a good offer’, even though their claim was for 5 per cent per annum for three years (interview with union negotiator, 23 September 2008; CPSU, 4 July 2008, PublicOrg Staff Bargaining Position 08 – Summary).

The union negotiators welcomed this package and saw it as a direct response to the collective action taken, which was a pivotal moment in these negotiations (interview with union negotiator, 23 September 2008). This package was more than the union negotiators were expecting, as expressed by one of the union negotiators: ‘…I think it’s a bloody great offer! And I’m really proud of our members for getting it’ (interview with union negotiator, 23 September 2008). The union negotiators also suspected that the management team was desirous of having the agreement finalised by the end of the year, as a natural end point to the year’s activities (interview with union negotiator, 3 October 2008).

The collective action was a turning point, and negotiations subsequently progressed smoothly, as the major disagreements had been resolved, although union members had yet to endorse the proposed agreement. An exchange of information then occurred between PublicOrg managers and the union negotiators in September 2008, to develop draft clauses for the new agreement. Both parties also jointly participated in a ‘drafting day’, which union negotiators reported was very productive (interview with union negotiator, 3 October 2008). Negotiations continued to resolve remaining issues, however, did not include any other family provisions (interview with union negotiator, 3 October 2008).

Both parties communicated with their constituents. Throughout the negotiations the union had issued a constant stream of bulletins, in contrast to the management team, who appeared to restrict communication activities mostly to occasionally emailing staff. Once the major issues had been agreed however, the managers issued a range of
information sheets to staff detailing the new proposals. Union activists, delegates and organisers were also again busy meeting with members, and managers approved paid union meetings during working hours (interview with union negotiator, 3 October 2008).

In October 2008, workplace activists explained the proposed agreement to members and non-union members and sought views on two key issues (interview with union negotiator, 24 October 2008). These were whether or not members accepted PublicOrg’s personal/carer’s leave package, and secondly, whether members accepted the pay offer or wanted to take industrial action (CPSU, October 2008, PublicOrg Agreement Meetings). One of the negotiators stated that the members were ‘keyed up from the previous action and wanted to keep going’ and so some were keen to take industrial action in support of an increased pay offer (interview with union negotiator, 24 October 2008). However, members did accept both offers, and 52 per cent approved the pay claim – this number being quite low as many union members had become almost militant and wanted to continue taking action (interview with union negotiator, 24 October 2008). These two issues were the crucial bargaining items in these negotiations, and somewhat unusually, an ‘equality’ item was viewed by union members as being as important as wages.

Three weeks later, union officials held members’ meetings in almost every one of the 230 workplaces so that members could endorse the proposed agreement, a huge undertaking (interview with union negotiator, 24 October 2008). Organisers visited branches, as did two elected union negotiators, who were taken ‘offline’ from their regular employment in PublicOrg, supplied with a hire car each by the union, and then travelled to branches. Union officials conducted the meetings, rather than workplace activists or delegates, to ensure that the information provided to the members was correct. This amount of contact for the union was new, but was considered necessary so that ‘people could have a say’ (interview with union negotiator, 24 October 2008).

Subsequently, 82 per cent of members endorsed the new agreement (CPSU, 4 November 2008, PublicOrg Members Vote to Endorse Agreement). Under the Workplace Relations Act, a majority of employees were required to approve a collective agreement prior to lodgement with the Office of the Employment Advocate.
(Piper Alderman Lawyers, 2006, 165-166). Member support of the agreement was expressed in a union bulletin, where one member was quoted as saying: ‘This is the first time I can remember where staff have gotten really passionate about their agreement, and it has made a big difference to the outcome’ (CPSU, 4 November 2008, PublicOrg Members Vote to Endorse Agreement).

5.6.5 About the negotiations
In summary, these negotiations were long and difficult. The union negotiators highlighted factors contributing to these negotiations being so protracted. They claimed that the management negotiators repeatedly delayed providing a detailed claim (interview with union negotiators 15 July 2008, 1 August 2008), tabling a claim only when the negotiations were well advanced and after union members had taken collective action in opposition to proposed reductions to personal/carer’s leave (CPSU, undated, PublicOrg’s 2008 to 2011 Collective Agreement Package). The union negotiators stated that the management team also cancelled some of the bargaining sessions at short notice and were unprepared for other sessions. They also reported that the general tone of the meetings was heated (interview with union negotiator, 30 July 2008).

5.7 Outcomes of the negotiations
PublicOrg employees secured a 4.3 per cent pay rise and a range of increased family provisions, some of which were included in the core claim, others were specific to PublicOrg. Table 5.4 shows the original and final status of the union’s claims, focusing on the family provisions negotiated.
Table 5.4: Comparison of CPSU’s Core Claim, PublicOrg Claim and Final Negotiated Outcomes

<table>
<thead>
<tr>
<th>Core claim</th>
<th>Union Claim</th>
<th>Outcome(^{20})</th>
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<tbody>
<tr>
<td>Work and family provisions require reasons for refusal be provided in writing, including for carer’s leave.</td>
<td>As per core claim.</td>
<td>Agreed.</td>
</tr>
<tr>
<td>Entitlements for mature aged workers, including part-time or fractional work.</td>
<td>As per core claim.</td>
<td>Subject to operational needs, managers to agree to flexible working arrangements.</td>
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**Paid Parental Leave**

| 14 wks paid maternity leave plus 14 weeks primary caregiver leave. | 28 weeks presented to management negotiators but 14 weeks paid maternity leave. | 14 weeks agreed. |
| 6 wks paternity leave.                                                                                              | Paternity leave as stand alone entitlement ie, not to be taken from personal leave. | Paternity leave as stand alone entitlement agreed. |
| Adoption leave ‘consistent with advances for primary care giver leave’\(^{21}\).                                      | As per core claim.                              | Additional 2 wks adoption leave agreed.                |

**Carer’s leave**

| Carer’s leave for caring for children as well as elderly as well as for chronic illness (ie expressed broadly to inc non-dependents and also for unforeseen care). | As per core claim, plus carer’s leave for unforeseen care. | 3 days special leave for care of extended family agreed. Carer’s leave can also be used for unexpected emergencies. |

5.8 Identifying equality bargaining and facilitative and inhibitive factors

Did a form of equality bargaining occur in this case study? If so, what were the facilitative or inhibitive elements? An examination of the evidence suggests that the

\(^{20}\) PublicOrg Collective Agreement, 2008-2011

\(^{21}\) CPSU Agreement Making Framework, 2008b, 3
CPSU did engage in a form of equality bargaining which correlates to a large extent with Colling and Dickens’ broad, multi-faceted definition, with its three elements.

These three elements consist of firstly, negotiating provisions to benefit women – which this case study did. The second element requires negotiators demonstrate an equality awareness of ‘commonplace’ bargaining items – which these negotiators did. While not a main feature of these negotiations, the parties also agreed to another family provision – that of not opening branch offices on week-ends during Christmas day and New Year’s Day, specifically to enable staff to balance work and family responsibilities. These negotiations therefore resulted in consideration of family provisions in the common bargaining item of working hours.

The third element of Colling and Dickens’ negotiations was including equality in the negotiation of change – which these negotiations also achieved, as a new pay grading structure was developed. An examination of this item is outside the scope of this thesis and so is not discussed here, but is worth acknowledging. Additionally, and while not a main feature of the negotiations, the bargaining parties also agreed to an innovative clause for mature aged employees. The union core claim contained a clause for benefits around part-time work and wages and superannuation arrangements for mature aged employees. The final negotiated clause did not include these specific entitlements, but was beneficial in other ways, stating in part:

‘(i)n consultation with employees and, where they choose, their representatives, the CEO will develop and pursue strategies aimed at attracting and retaining mature aged workers…which will allow flexibility to balance their work, personal and family life and [PublicOrg’s] business outcomes…’ PublicOrg Collective Agreement, 2008-2001.

This clause even goes beyond Colling and Dickens’ definition to progress towards achieving equality for another equal opportunity population group, that of mature aged workers, as well as including family provisions. This aligns with Briskins’ (2006) definition of ‘equity bargaining’, which includes negotiating EEO provisions for population groups other than women. It is evident that a broad form of equality bargaining is emerging within this union.

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22 For more information on this provision, see Williamson, 2009.
The factors which contributed to the successful equality bargaining are discussed below, commencing with an examination at the national level. These factors are also depicted in Figure 5.2.

5.8.1 National factors
Two main national factors are evident in this case study. The first was the decentralised bargaining system, which impacted on negotiations at the industry level of the APS. In response to decentralisation, the union changed its structures, processes, and significantly, developed a core claim, which directly impacted on bargaining for family provisions. The union’s response can be seen to cascade across regulatory levels. It was developed in response to national level regulatory changes; the responses aimed to achieve the same level of entitlements across the industry, through enterprise level negotiations. Action across both the industry and enterprises levels is thus intertwined. The second national level factor was the paid parental level inquiry and associated campaign, which directly impacted on the PublicOrg negotiations.

i) Decentralisation and increased enterprise bargaining within the APS
The union response to changes introduced by the Workplace Relations Act, which resulted in the wages and employment conditions for APS employees being determined at the level of the enterprise, was threefold. Firstly, the union changed internal structures to increase member involvement. Secondly and relatedly, the union changed its resourcing of negotiations, so that each was supported by an official who was an expert in bargaining and the legal framework, as well as an organising team to conduct the campaigning associated with bargaining. Thirdly, the union developed a core claim for all negotiations.

The first two initiatives increased bargaining and organising activities and resulted in a high level of member involvement in the PublicOrg negotiations. Members were willing to be involved in campaigns and collective action to prevent a reduction in an equality item, that of personal/carer’s leave. The internal union structure reflected an equality orientation – that unions need internal equality before they can effectively engage in equality bargaining (ILO, 2001). The CPSU had this – as well as a strong
leadership which included women (as discussed shortly) and all the negotiators were aware of, and campaigned and negotiated for equality issues. Member involvement was strong, and this commitment to negotiating equality issues was present at the grass roots, at the level of members, upwards, through union officials, to the leadership.

The third union response – of developing a core claim, to counter the fragmentation of centralised wages and conditions – also strengthened the union as a whole, as members were involved in its development. The core claim contained a range of family provisions, including paid parental leave and carer’s leave, which all union negotiators were required to include in their log of claims and negotiate. This also strengthened internal equality within the union and was an effective way to ensure that equality items were included in bargaining agendas and negotiated.

The decentralisation of the APS can be viewed as an external factor for equality bargaining. Chapter Four reviewed the concerns of researchers about the effects a deregulated and decentralised industrial relations system could have on female employees. This case study shows that, in this instance, female employees indirectly benefited from decentralisation. The level of paid parental leave and other family provisions may have been uneven across the APS, which could be seen as a negative outcome of decentralisation, but the changes instigated by the union resulted in empowering members, who ultimately negotiated for improved family provisions.

\textit{ii) Paid parental leave campaign}

The paid parental leave inquiry and campaign directly impacted on bargaining for paid parental leave. The union Secretary announced just before the PublicOrg negotiations were about to start – in a social policy environment rife with speculation about a proposed paid parental leave scheme for Australia – that the union would be negotiating for twenty-six weeks paid maternity leave. This announcement was then incorporated as an item in all PublicOrg claims. The national policy environment directly impacted on enterprise level negotiations. The media also reported on the union Secretary’s comments, the relevant government Minister was then reported as stating that the government could not afford to pay this amount of paid parental leave,
and this all added to the speculation, and momentum, about a national paid parental leave scheme.

5.8.2 Industry factors
As discussed above, some of the national, industry and organisational level factors are intertwined. The impacts of decentralisation and the paid parental leave inquiry and campaign were felt at the industry level, as the union developed a response across the APS and within the union, and then also at the level of workplaces. The other industry level factor is somewhat more circumscribed, namely, the use of benchmarking by both parties.

i) Benchmarking
The other aspect of the impact of a decentralised enterprise bargaining system is that enterprise bargaining led to an increase in the paid maternity/paternal leave provisions for most large APS agencies. Following the redundancy of APS-wide industrial instruments, improved conditions only became possible through employer initiatives, or through enterprise bargaining. Prior to these negotiations, PublicOrg lagged behind comparable agencies, which were used as a benchmark. This appeared to prompt PublicOrg to increase the maternity leave provisions to fourteen weeks to be in line with other agencies. Research has found that benchmarks can also facilitate the introduction of family provisions (Gregory and Milner, 2009, 128; Olgiati and Shapiro, 2002, 26), as occurred in this case study.

ii) Union leadership
The core claim was developed by the CPSU to bring consistency to the level of wages and conditions across the APS, which had diversified due to enterprise bargaining. The effects of the core claim were threefold. Firstly, as mentioned, it strengthened member involvement in the union, and ensured that those developing the core claim were aware of equality issues. Secondly, it was a log of claims which resulted in increased family provisions through bargaining. As well as increasing the provisions in PublicOrg, the core claim was, effectively, a form of pattern bargaining, used in multiple negotiations. These workplaces however, had the same employer – the Australian Government. This case study shows the effectiveness of this form of
pattern bargaining, where the same claim was used for all APS negotiations, resulting in improved conditions for PublicOrg employees.

Thirdly, the core claim had a broad reach across the union, with the union leadership initially determining that member involvement in formulating the core claim was essential. Negotiating family provisions was diffused throughout the union formally, through the negotiation of the core claim, and also informally through negotiators communicating with each other. The widespread approach to equality throughout the union was an organisational factor for equality bargaining. Williamson argues that this was, in effect, a form of gender mainstreaming (2009). This can occur when both unions and managers examine collective agreements for their differential impact on women and men on a broad range of issues (Colling cited in Williamson, 2009, 161). The CPSU examined bargaining items for such a differential impact, and also considered gender in items which were not inherently gendered, such as seeing the impact on an employee’s family responsibilities of travel undertaken outside of regular working hours.

Negotiators were also aware of the outcomes of the negotiations being undertaken by their colleagues, and these results provided benchmarks for other negotiations. Bargaining results were monitored, as negotiators collected data on bargaining outcomes in a central database, which was then used by negotiators as they tailored claims to their specific negotiations, as occurred in this case study. The family provisions in the core claim were effectively diffused across the union, across the APS, and throughout bargaining processes, from claim development to assessing the results of bargaining. Again, this ties in with a wider concept of equality bargaining, which requires equality provisions be monitored.

The union’s approach to increasing paid parental leave exemplified a successful ‘top-down and bottom-up approach’ (interview with union negotiator, 10 November 2008). Union leadership at the most senior level, combined with the core claim being determined by members and union officials, resulted in increased paid maternity leave and improved carer’s leave in the core claim, which eventually resulted in increased conditions being included in PublicOrg’s agreement. The importance of union leadership corroborates previous research, which identified strong union leadership as
a necessary condition for effective equality bargaining (Heery, 2006b, 534). The fact that paid parental leave was a priority for the union leadership and negotiators also reinforces findings that giving equality provisions a high priority leads to successful equality bargaining (Kumar and Murray, 2002).

Once the union was committed to bargaining for these provisions, it was also necessary for the union to lead and educate members about the desirability and necessity of paid maternity leave to ensure an adequate level of support for successful negotiations. Members were involved in the claim development and had ‘ownership’ of the core claim, which may have assisted in a greater level of support for family provisions than if they were determined only by paid union officials. The core claim was also ‘owned’ by all union negotiators as negotiating the core claim was not confined to just the PublicOrg negotiations, but was a requirement of all negotiations. This may have overcome any resistance from negotiators who otherwise may not have included these items in their claims.

5.8.3 Organisational factors
Some of the organisational level factors have already been discussed above, namely, those emanating from the decentralisation of bargaining in the APS. However, other organisational factors are also evident, including the campaigning activities which were undertaken in these negotiations. Even though collective action was taken, there was still a convergence of interests between the parties, around the issue of paternity leave. The final factor identified at the organisational level is an inhibitive one – the bargaining relationship between the parties.

i) Union campaigning
As well as formal ‘across the table’ negotiating, these negotiations involved campaigning. These two activities were seen by the union as two discrete, but linked areas. In this case, campaigning was an integral element for the successful negotiation of personal/carer’s leave. In the lead-up to formal negotiations, the union negotiators identified and engaged activists and members in claim development through surveying members, activists distributing material and the bargaining team and Section Councillors undertaking training.
Once the claim had been developed and presented to the management representatives, negotiations commenced and the union issued regular bulletins updating members on progress throughout this period. PublicOrg’s bargaining team met regularly, as did the Section Councillors, who provided support to the negotiators and acted as a conduit between delegates and the bargaining team. Negotiations escalated and member activism dramatically increased in response to management’s personal/carer’s leave proposal, culminating in collective action to support an equality bargaining item. The collective action formed a discrete campaign within the broader negotiations. Members’ feedback was then sought on the revised proposals advanced by PublicOrg, with another survey being conducted. The majority of 230 branches were then visited for staff to endorse the agreement. This high level of campaigning and member involvement directly contributed to successful equality bargaining as member activism was integral to the campaign for carer’s leave.

ii) A convergence of interests

Researchers have also found that a convergence of interests between bargaining parties can also lead to the successful negotiation of equality items (Alemany, 1997, 97; Colling, 1997, 12). The early agreement on paternity leave demonstrates such a convergence, even though the reasons of the bargaining parties were different. The union negotiators wanted increased parental leave to bring PublicOrg up to the level of other APS agencies; the management team agreed to increase paternity leave to assist employees balance work and family responsibilities to enable them to contribute more positively to the workplace. The union negotiators also believed the managers supported this increase as it would result in a more accurate reporting of leave undertaken. Common ground was found, despite the different motivations.

iii) Bargaining relationship

The bargaining relationship was not one of trust and partnership, which other research has found to be necessary to equality bargaining (Dickens, 2000b, 202). On the contrary, this case study shows that a low trust, hostile bargaining relationship can still result in successful equality bargaining. The elements of this type of relationship were quite clear – the management team did not provide a fully detailed claim, which also made the managers appear to be somewhat unprepared. The meetings were hostile at times, and a management negotiator yelled at the union negotiators in one
instance. The most obvious example of a low trust relationship however, is that the union members resorted to collective bargaining to oppose an employer claim to reduce a family provision, action which ultimately achieved its aim. While a low trust bargaining relationship may make negotiations more difficult, this case study shows that distributive bargaining can lead to successful equality bargaining.

5.9 Conclusion
This chapter presented a case study of bargaining in the APS with the aim of determining whether a form of equality bargaining was occurring. It commenced with an overview of regulation covering the sector. It showed that successive generations of changes aimed at decentralising the negotiation of wages and conditions resulted in an uneven spread of family provisions – particularly paid maternity leave – across the sector. The chapter profiled ‘PublicOrg’, showing that employees were mainly women engaged in service provision, generally lower paid and with a higher level of caring responsibilities than other groups of APS women. It was therefore important that they retained access to a common level of carer’s leave and increased parental leave provisions.

Several important findings arise from this case study. Firstly, the CPSU did engage in a broad form of equality bargaining in these negotiations, including some innovative provisions. The case study also identified a range of factors which contributed to the successful bargaining of outcomes within the scope of equality bargaining. These were, at the national level, a result of the decentralisation of the APS and the Productivity Commission inquiry into paid parental leave; at the industry level, benchmarks also influenced the negotiations. Organisational level factors were also essential, including union leadership, the inclusion of family provisions in the core claim, the commitment shown by union members to campaigning for family provisions, and the awareness of the importance of gender equality issues demonstrated by the union negotiators. This case study has identified that a range of factors, at several levels, were all necessary for a broad form of equality bargaining to be undertaken.
FIGURE 5.2
Factors Impacting on Equality Bargaining: CPSU and PublicOrg

Facilitative Factors

Industrial relations framework

Decentralisation and deregulation
- Workplace Relations Act

Public policy (Productivity Commission inquiry)

BARGAINING

EMPLOYER
- industry benchmarks

UNION
- union leadership
- campaigning
- core claim; diffusion throughout union; internal equality
- industry benchmarks

- collective action
- high level of activity by members
- strategic and extensive campaigning
- convergence of interests

OUTCOMES
Increased family provisions, particularly paid parental and carer's leave

Inhibitive Factors

- bargaining relationship
Chapter Six

The NSW Nurses’ Association and Private Hospital Employers: Bargaining for equality in a transitional system

‘They’re astute observers of social trends and they know the social trends emerging, but [paid maternity leave] is not for them...’

(Interview with union negotiator, 19 September 2008).

6.1 Introduction

In August 2008, the New South Wales (NSW) Nurses’ Association presented a log of claims to senior managers in two separate private hospital groups, with the main – and only – family provision in the claim being for an unspecified ‘improvement to parental leave’. The ensuing negotiations between the union and these two employers could hardly have been more different, although perhaps somewhat surprisingly, the outcomes were very similar. Negotiations for a collective agreement in one of the organisations were conducted efficiently and quickly, and achieved mutually satisfactory outcomes for the union and management negotiators. The other negotiations ultimately broke down, which propelled the union to undertake some strong campaigning activities to support its claim. This chapter provides a contrast of how union negotiators conducted two bargaining rounds simultaneously, based on a similar claim presented to two different employers, using very different bargaining tactics, but ultimately resulting in very similar outcomes.

This chapter commences with an overview of the working conditions of nurses, then examines current family provisions available to nurses in both private hospital organisations. This chapter then follows the progress of both sets of negotiations which are discussed consecutively, findings are considered and conclusions about whether equality bargaining was undertaken are made. If equality bargaining was undertaken, the facilitative or inhibitive factors which impacted on the negotiations are identified and discussed.
6.2 Wages and conditions in the private hospital nursing industry

The medical health workforce in Australia consists of ‘doctors, nurses, allied health workers and others such as paramedics and dentists’, with nurses constituting the largest occupational group (Willis et al, 2005, 16). These professionals work either in the public or private sector health sector, both regulated by state and federal governments (Australian Institute of Health and Welfare [AIHW] 2008, 12). The public health sector is government funded; private hospitals are owned by for-profit as well as non-profit organisations and include large corporate operators, religious operators, and private health insurance companies (Department of Health and Aged Care, 2000, 3). Both the case study organisations were located in the private hospital sector.

In 2007, around two-thirds of nurses (over 170,000) worked in the public health system, and almost 90,000 worked in the private sector (AIHW, 2009, 16). The nursing profession as a whole is highly feminised, and men comprised less than 10 per cent of the workforce at this time (AIHW, 2009, 9). The workforce was also ageing, and in 2007 the average age was forty-three years (AIHW, 2009, 9). The ageing of the workforce is contributing to a shortage of nurses, and at the time of the negotiations, the shortage was expected to continue, despite an increased number of graduates entering the profession (Australian Nursing Federation, [ANF], 2008a, 5). The shortage also resulted from an estimated 10 per cent of registered nurses choosing not to work in nursing because of inadequate pay and conditions (ANF, 2008a, 12). The federal nursing union, the Australian Nursing Federation, has claimed that nurses are not valued by employers, and this has also led to recruitment and retention problems (ANF, 2008b, 10).

Political and industrial factors have been identified as contributing to nurses not being appropriately remunerated or provided with adequate conditions. The ANF has documented the history of award variations for nurses, finding that nurses’ pay and conditions have been artificially depressed as governments have been reluctant to increase expenditure on nursing staff in the public sector (ANF, 2008a, 13). Wages in the public sector set the benchmark for wages in the private sector, so it follows that wages in the private hospital sector have also been depressed.
Industrially, unions and researchers have argued that the pay and working conditions for nurses lags behind comparable male dominated industries and that nurses are significantly worse off because they are occupationally located in a female dominated industry (ANF, 2008a, 7-8; Duckett, 2005, 31). Duckett, in a profile and discussion of the Australian health workforce, has noted that women are under-represented in management levels in this workforce, and higher income professions are male-dominated (Duckett, 2005, 31). In response to this gender pay inequity, nurses and nursing unions have conducted a long campaign to achieve professional recognition with adequate wages (Willis et al, 2005, 17; Bartram et al, 2007, 102).

6.2.1 Family provisions in the nursing industry

Nurses tend to balance work and family commitments by working part-time (Jamieson, 2007, 16; ANF, 2008a, 11) and by working shifts, which enables parents to undertake caring responsibilities at all times of the day. While shift work can be useful for some parents to balance work and family responsibilities, for other nurses it can be an impediment. The ANF has stated that the

‘…seven day, twenty-four operation of most health services are an enormous challenge to effectively accommodating work and other responsibilities. The health industry has been slow to respond to these challenges in any meaningful way…’ (2008a, 12).

However, one of union negotiators stated that nurses in the private sector appeared to have a better work/life balance than public sector nurses, as it was more common for private sector nurses to work part-time and have control over rosters (interview with union negotiator, 19 September 2008). Similarly, a parliamentary inquiry conducted in 2002 found that ‘(m)ore family friendly working conditions were often expressed as the reason why some nurses move to work in the private sector…’ (Senate Community Affairs Committee, 136). Statistical data reinforces this, with public sector nurses working on average thirty-three hours a week, and private sector nurses averaging 2.3 fewer hours each week (AIHW, 2009, 16).

In regard to other family provisions, nurses in the public sector received a higher level of paid maternity leave than private sector nurses. In 2008, the majority of public hospital nurses were entitled to up to fourteen weeks paid maternity leave, depending on their state industrial instruments (ANF, 2008b, 5). Paid maternity leave provisions
were contained in collective agreements, state awards, public sector regulations and human resource policies, with ‘outcomes basically dependent on the ability to bargain’ (ANF, 2008b, 5). Six to twelve weeks paid maternity leave was common in the private health sector. In the public sector, adoption leave mirrored maternity leave, however this was not the case in the private sector. Similarly, paid paternity leave was less in the private than the public sector, generally set at one week’s paid leave, however one State did provide a generous fourteen weeks and another State provided fourteen weeks on a shared basis (ANF, 2008b, 5).

Workloads and work intensity also impacted on nurses’ ability to balance work and family responsibilities. In 2005 it was reported that the intensity of nursing had increased, due to a reduction in the number of nurses as well as an increase in the complexity of patient needs (Duckett, 2005, 55). Work intensification has resulted in nurses working overtime, which further impacts on time able to be spent on family responsibilities (Gordon et al, 2008, 100). To address this situation, in 2002, the NSW Nurses’ Association conducted a work value case, seeking increased wages for work intensification. This resulted in a 6 per cent wage increase (White and Bray, 2005, 147). Nurses and other health professionals in the public health sector were then used as comparators in work value cases for nurses in the private sector, which also resulted in increased wages and improved conditions for private sector nurses (interview with union negotiator, 19 September 2008).

The workloads and work allocation of nurses remains largely at the discretion of local managers, and not regulated by an industrial instrument. Bray et al argue that this ‘has contributed to a growing conflict over work intensification in New South Wales, resulting in increased labour turnover and dissatisfaction with working conditions (2005, 67; 86). Although their research was confined to public hospitals, the case studies for this thesis reveal that workloads in private hospitals were also an issue for employees.

Other family provisions have also been found to be important to nurses (ANF, 2008a; Jamieson 1997; Senate Community Affairs Committee, 2002). In 2002, a Senate Committee was ‘repeatedly told by nurses and nursing organisations that the need for more ‘family friendly’ practices in the workplace was a significant issue for the
retention of nurses’ (Senate Community Affairs Committee, 138). Nurses called for a range of improvements to their wages and conditions, including flexibility in rostering and working hours, accessible child care and increased remuneration (Senate Community Affairs Committee, 2002, 145).

Paid parental leave has also been an important issue championed by nursing unions. The ANF was very active in the 2008 campaign for paid maternity/parental leave and made a submission to the Productivity Commission inquiry (2008b) and appeared at the hearings (Productivity Commission, 2008c). In May 2008, Unions NSW, the peak union body in New South Wales, endorsed the introduction of six months paid maternity leave as a state-wide union position (Unions NSW, 2008, 5). Being an affiliate of Unions NSW, the NSW Nurses’ Association also adopted this position (NSW Nurses’ Association, undated(a)). Unions NSW then commenced a campaign to lobby the federal government to introduce a twenty-six week government funded maternity leave scheme, including organising a petition (Unions NSW, 2008a) and a video competition highlighting the need for a paid maternity leave scheme, which was sent to the Prime Minister. The NSW Nurses’ Association also supported these initiatives (NSW Nurses’ Association, 2008a). It was against this backdrop that bargaining for new collective agreements in HealthCo and HospitalOrg commenced.

6.3 Background to the negotiations
This section provides context and information specific to the two negotiations between the NSW Nurses’ Association, HealthCo and HospitalOrg. It provides an overview of the bargaining parties and discusses their relationship, before moving on to detail the structure of the union and how this influenced the claim development. Preparations prior to negotiations are then detailed, as are the specific family provisions available to employees of the two case study organisations.

6.3.1 About the bargaining parties
At the time of the negotiations, HealthCo was the second largest private healthcare provider in Australia, in competition with HospitalOrg, although HealthCo also provided other medical facilities as well as private hospitals. The company consisted of forty-three private hospitals, a pathology company with sixty-three laboratories in

HealthCo had a ‘very flat structure’, so that one manager was responsible for negotiations, assisted by the organisation’s employment lawyer, whose role was limited to providing legal advice (interview with union negotiator, 20 October 2008). The manager was also supported by senior managers who were involved in working parties on various issues, however they did not directly participate in the negotiations.

HospitalOrg was the largest private hospital operator in Australia (HospitalOrg, undated, *About HospitalOrg Health Care*). The company is a global organisation, operating over 100 hospitals and employing over 25,000 staff in Australia, the United Kingdom and Indonesia. There were over sixty-five HospitalOrg hospitals and day surgery units in Australia (HospitalOrg, undated, *About HospitalOrg Health Care*).

The negotiations were for a collective workplace agreement to replace an agreement due to expire in September 2008. This agreement covered nurses in all classifications as well as midwives. The employees worked in forty-three workplaces owned or operated by HospitalOrg, including private hospitals and related businesses, such as property trusts (Sch A and B, *HospitalOrg and NSW/ANF Union Collective Agreement 2009-11*). The main negotiator for the employer was the Human Resources Manager supported by three managers from the largest hospitals (interview with union negotiator, 19 September 2008).

The nurses were represented by the NSW Nurses’ Association, a ‘state-wide occupationally based health-sector-specific’ union, which was also the NSW branch of the federal ANF (Bray et al, 2005, 65). In 2005, it was reported that the union had a membership density of 60 to 70 per cent (White and Bray; 2005, 134). This union covered nurses, midwives, assistants in nursing and nursing students (ANF, undated). The federal union had 170,000 members as at June 2010, in rural and regional areas in a wide range of industries, including in private and public hospitals, schools, universities, health and community services, local government, and professional
organisations (ANF, undated). At the time of bargaining, the NSW Nurses’ Association had 51,000 members (NSW Nurses’ Association, undated(a))\(^1\).

The NSW Nurses’ Association negotiations were conducted by one male and one female union negotiator who specialised in collective bargaining. The main two negotiators were very experienced, and the female negotiator had conducted the previous negotiations with the same managers of both organisations (interview with union negotiator, 19 September, 2008). These negotiators were supported by eight organisers, who visited workplaces throughout the negotiations, talked to members and encouraged involvement. The union negotiators also had a delegate support structure behind them, as will be detailed shortly.

6.3.2 Previous bargaining relationships

The following section examines the bargaining relationships between the union and the organisations, highlighting the different attitudes and histories between the union and the two different private hospitals.

i) HealthCo

The union negotiators had very different relationships with the managers of both organisations and these affected the processes of negotiations. The union negotiators reported that they, as well as the HealthCo manager, expected that the negotiations would be ‘pragmatic’ (NSW Nurses’ Association, 7 October 2008, *HospitalOrg and HealthCo Pay Talks Begin*). This approach has been described in the literature as involving expediency and smooth implementation, rather than being concerned with ‘philosophical purity’ (Rasmussen, 2004, 21). Correspondingly, one of the union negotiators stated that the employer was:

‘…not anti-union… they recognise that we have a role to play… they’re not going to make it easy for us…[but] they’re not actively going out and making our lives hard’ (interview with union negotiator, 19 September 2008).

The cordial and pragmatic relationship between the union and HealthCo was also reflected in the low level of industrial disputes or collective action taken in previous

\(^1\) Union density in the workplaces which would be covered by the new agreements was unable to be obtained. Due to privacy concerns, a union interviewee was unwilling to divulge density figures (interview with union negotiator, 23 July 2010).
negotiations, as private sector nurses did not have a history of engaging in industrial action. Public health nurses were more likely to take industrial action in support of the claims presented to their employer, the NSW State Government, than were nurses in the private hospital system. The union negotiators stated that ‘we can be unpredictable in terms of our campaigning in the public system’, and that the employer was ‘not prepared to take us on, because of the brand of the association and what they think we could do’ (interview with union negotiator, 19 September 2008).

The negotiators explained what they considered to be the underlying reasons for the lack of collective action. Private health nurses worked part-time in the private sector to achieve a better work/life balance than their public sector counterparts – ‘their job is not their life’ (interview with union negotiator, 19 September 2008). Many of them had worked in the public sector, where work intensification was common, then moved to the private sector where the pace was a little slower. Conversely, the union negotiators reported that nurses in the public sector were ‘obsessed’ with their work, often doing unpaid overtime in a fast-paced environment. Private sector nurses’ lower engagement with the workplace was reflected in a general unwillingness to engage in industrial or collective action.

ii) HospitalOrg
As with HealthCo, the union negotiators reported that the HospitalOrg bargaining representative also anticipated engaging in ‘pragmatic bargaining’ (NSW Nurses’ Association, 7 October 2008, PrivateHealth and HealthCo Pay Talks Begin). This expectation was also articulated by the management representative explaining to this researcher that he did not anticipate any major changes to the industrial agreements: ‘…we take the view unapologetically that we won’t disturb what are award based arrangements’. The management representative considered that the award had worked well for the industry. It ensured that staff were ‘getting the structured pay and overtime arrangements that exists for others and that they’ve become used to’ (interview with manager, 27 October 2008). The existing collective agreement was minimal, referring back to the award, which was the main industrial instrument. The operation of industrial instruments was complex however, and is discussed shortly.
The HospitalOrg management negotiator believed that the relationship with the union was ‘good’ (interview with manager, 27 October 2008). However, the union negotiators believed that the relationship was somewhat more fraught. The previous negotiations for award variations and the two page enterprise agreement had involved ‘a significant clash’, and the union negotiators were expecting similar difficulties in these negotiations (interview with union negotiator, 19 September 2008). Ultimately, these expectations were realised.

6.3.3 Union structure and influence on determining the claim

Prior to Work Choices, employees in HealthCo and HospitalOrg were covered by a State award and a State enterprise agreement negotiated by paid union negotiators, in which union members only ‘had a vague interest’ (interview with union negotiator, 19 September 2008). With the commencement of Work Choices in 2006, the relevant award became a Notional Agreement Preserving a State Award (NAPSA), which would only exist for three years (Grozier, 2005). The New South Wales government had passed legislation which turned State consent awards (those agreed by the bargaining parties) into State agreements, which had no sunset clauses, meaning that they would remain operative until replaced with a federal agreement (Gray, undated). The NAPSA and the consent award operated together. At the time of negotiations, all categories of nurses in various sectoral and employment contexts were covered by these instruments (HealthCo 2006-08 Enterprise Agreement; Private Hospital Industry Nurses’ (State) Award).

The negotiations for both agreements prior to the current agreements were conducted in 2005, just before Work Choices became operative. Given unions’ opposition to Work Choices and concerns about moving from a state to a federal system (ACTU, 2005b, 15-17), the NSW Nurses’ Association increased members’ involvement and solidarity to withstand any negative actions an employer might take in a climate potentially hostile to unions. The union established a new structure which increased the number and type of members’ committees and opportunities to develop policy and participate in negotiations. The new structure represented a very different approach, with members being involved at all stages, from developing the claim to assisting the negotiators. This resulted in members’ moving from a position of almost total non-
participation in agreement-making to one of participation (interview with union
negotiator, 19 September 2008). The structure is detailed in Figure 6.1.

Members were organised into branches at the level of the workplace, at hospitals. These members elected delegates who could also take part in higher level union activities. The negotiators explained that ‘any hospital or facilty can set up a branch…and it happens annually, and every year there has to be an election for president, secretary and delegates to the Annual Conference’ (interview with union negotiator, 19 September 2008). A Committee of Delegates, consisting of about 200 to 300 delegates were drawn from the branches and this committee referred matters to the Annual Conference, which was the union’s ‘supreme’ policy making forum (interview with union negotiators, 19 September 2008; NSWNA, undated(c)). The Committee of Delegates could also refer matters to the Council of the Association, which consisted of the senior management of the union and twenty-one councillors. This group met monthly to direct policy, as formulated by the Annual Conference.

The Annual Conference was attended by about 400 or 500 delegates from private and public sectors (interview with union negotiator, 19 September 2008). The Annual
Conference heard resolutions from the various workplace branches and these were then referred to one of three Log of Claims Committees which met every two years or so. There was a Log of Claims Committee for the union’s major industry sectors – for the public and private sectors and the aged care sector (interview with union negotiator, 26 March 2009). The Log of Claims Committee approved or rejected bargaining items which were used for all negotiations.

The Committee of Delegates nominated who was going to be on the Log of Claims Committee, and the claims committee consisted of elected negotiators, union councillors, and the union Secretary, ‘so it’s a combination of the formal union leadership plus people nominated from the industry’. As a union negotiator explained:

‘(t)he Committee of Delegates might meet twice, and there’s a very frank discussion about what might get up... So this all comes together at the Log of Claims Committee, there’s also a feedback mechanism whereby the list [of claims] goes back to branches and then they formally endorse the claim... Other unions have a log, have a mass meeting, have talked to you, then there’s a vote and people stick their hand up or not. We don’t actually have a history of doing big meetings like that, because it’s such a formal branch structure (interview with union negotiator, 19 September 2008).

The union’s log of claims was developed with input from three sources. Firstly, the Log of Claims Committee established an industry or ‘core’ claim for the private hospital industry, which included a 5 per cent per annum pay rise for four years, a continuing education allowance, increased night shift allowance to 25 per cent, and paid parental/maternity leave (NSW Nurses’ Association, 4 August 2008, HealthCo Nurses & Midwives Need Parity). The second source was the union’s paid leadership. Other elements of the paid maternity leave claim, such as incorporating the hospitals’ human resource policy into the agreement so that the paid maternity leave entitlements could not be changed by management prerogative, were developed by the union leadership and became union policy (interview with union negotiator, 19 September 2008). The third source were individual negotiators, who could formulate claims, as long as there was consistency between the core claim and the claim for the specific enterprise (interview with union negotiator, 26 March 2008). This occurred in these negotiations, as will be shown.
6.3.4 Preparing for negotiations

In July 2008, the union negotiators commenced bargaining preparations for both sets of negotiations. This involved establishing the required member committees, surveying members, and developing the bargaining claim. A Bargaining Organising Committee consisting of about fifteen female nurses was established to represent the members in each of the negotiating rounds, provide input to the negotiators throughout the course of negotiations and relay information back to delegates (interview with union negotiator, 19 September 2008). This committee participated in regular teleconferences throughout the negotiations. As well as fulfilling these practical functions, the existence of this committee sent a signal to the employer:

‘... even the fact of [the bargaining committee’s] existence makes employers think. We make a point of telling them...We use it as setting the frame to make sure they know that this a place where the workforce is engaged. And that’s new in many nursing employment areas because essentially being award dependent, it wasn’t done’ (interview with union negotiator, 23 December 2008).

Delegates nominated themselves to be on the bargaining committee, an organiser then met with these individuals and used their ‘professional judgement’ to further determine the final make-up of the committee (interview with union negotiator, 19 September 2008). The organiser also ensured that there was a best fit between the individuals’ skills and abilities and their potential involvement. The organisers were well equipped to undertake this role, as they were former nurses (interview with union negotiator, 19 September 2008) and so understood both the requirements of the union as well as the workplace and the needs of the employees.

With the bargaining structures and centralised log of claims in place, the next step was to tailor the log of claims (or just ‘claim’ as the union preferred to call the log) to the workplaces to include any claims members in both organisations specifically wanted. This commenced with a union-initiated member survey (NSW Nurses’ Association, 31 July 2008, Private Hospital Nurses Need Parity). Three thousand surveys were sent to members and 1,800 responses were received, which the union negotiators considered very high (interview with union negotiator, 19 September 2008). Achieving wage parity with the public sector – where employees were paid more than private sector nurses – was the most important issue to union members (interview with union negotiator, 19 September 2008; NSW Nurses’ Association, 3
September 2008, *Private Hospital Nurses – Want a Pay Increase? It’s in Your Hands*). Other major issues included increased allowances and unreasonable workloads. Paid maternity leave was also nominated as being important but it was not a priority for members (interview with union negotiator, 19 September 2008).

Information from the survey was collated and the negotiators wrote a report on the most important claims according to member preferences, as well as the union’s core claim. Industrial staff then considered this report and the resolutions passed by the Log of Claims Committee to develop a draft claim. This then went to the Committee of Delegates ‘and there was a very frank discussion about what might get up’ and the draft claim was finalised (interview with union negotiator, 19 September 2008). The claim then went back to the branches for endorsement. The union’s claim for both HealthCo and HospitalOrg mirrored the core – or industry – claim, but contained more detail (NSW Nurses’ Association, 4 August 2008, *HealthCo Nurses and Midwives Need Parity*). The claim is discussed after the existing conditions in the two enterprises are detailed, which highlight the gaps in provisions available to nurses.

### 6.3.5 Existing conditions for HealthCo and HospitalOrg employees

Until 2006, nurses in the private hospital sector had been covered by a State award and State enterprise agreements, subject to complex transitional arrangements bringing industrial instruments into the federal system. HospitalOrg and HealthCo employees were covered by the same State based award (*Private Hospital Industry Nurses’ (State) Award*), which became a NAPSA under *Work Choices*. This award had been varied to include all the *Family Provisions* test case entitlements and also included a range of other previous test case entitlements, including rostered days off, make-up time, carer’s leave and flex-time (cls 44; 5; 28; 28, 5, *Private Hospital Industry Nurses’ (State) Award*).

All the test case provisions were also incorporated into HealthCo’s State enterprise agreement, as were the clauses for flexible working hours. Employees could also access ten days a year as carer’s leave, more leave by agreement with their manager (cl. 4; cl 28, *HealthCo and NSW Nurses’ Association, Nurses and Midwives (State) Enterprise Agreement 2006-2008*). The HealthCo agreement incorporated paid maternity leave by referral to existing human resource policies (cl. 45, *HealthCo
Enterprise Agreement 2006-08), which meant that the level of paid maternity leave available varied across workplaces. Union negotiators stated that some workplaces provided twelve weeks and some provided none, however they believed that six weeks was the common amount available (interview with union negotiator, 27 October 2008). The union did not know the actual extent of the provision of parental leave, because as well as being contained in enterprise agreements, these entitlements also derived from human resources policy, to which the union did not automatically have access (interview with union negotiator, 19 September 2008). As will become clear, the employer was also unaware of the different level of provisions across each workplace.

HospitalOrg employees were covered by a State enterprise agreement (HospitalOrg & NSW Nurses’ Association Enterprise Agreement 2006-08), which included the Family Provisions test case entitlements by referral, with the award variation decision an appendix to the agreement. Paid parental leave was contained in HospitalOrg HR policy, with employees being entitled to different periods depending on length of service. Employees who had between one and three year’s service were entitled to six weeks paid parental leave; employees who had over three years were entitled to eight weeks paid parental leave (HospitalOrg, 2007, HospitalOrg Parental Leave Policy). Six weeks paid parental leave was introduced five years ago and the eight weeks, ‘two or three years ago’ (interview with manager, 27 October 2008). This condition was introduced at the initiative of the management, so that the organisation could offer some paid parental leave, as did the public sector (interview with manager, 27 October 2008), even though this amount was not equivalent to the public sector entitlement. The organisation also provided one week’s paid paternity leave and adopting parents were entitled to the same leave as non-adoptive parents.

Employees were also entitled to up to ten days personal/carer’s leave (HospitalOrg, 2007, HospitalOrg Sick Leave Policy). The other main family provisions were working part-time (interview with union negotiator, 19 September 2008) and self-rostering. The employer believed that self-rostering was the single biggest attraction of working for the organisation (interview with manager, 27 October 2008). Local workplace rules regulated rostering, however, the nurses could change and vary shifts to suit their own circumstances (interview with manager, 27 October 2008).
The organisation stated that it was committed to a work and family balance for employees (HospitalOrg, 2007, HospitalOrg Parental Leave Policy) and nominated family friendly workplaces as contributing to the organisation becoming an ‘employer of choice’ (HospitalOrg, undated, Employee Benefits, HospitalOrg website). In practice, however, the management representative did not aspire to this, causing the union to misunderstand the organisation’s aims. As will be shown, this impacted on the negotiations, as the union negotiators structured some of their arguments around this belief.

6.3.6 The union’s claim
The union’s major claims centred on financial issues, and included a 5 per cent wage increase for each of three years and an increase in allowances to bring the private nursing sector in line with public nurses, including the introduction of a continuing education allowance ranging from $28.00 to $57.00 a week. Survey respondents rated the issue of a continuing education allowance as important, as an acknowledgement of higher skills gained additional to the entry level qualifications required for this profession (NSW Nurses’ Association, 4 August 2008, HealthCo Nurses & Midwives Need Parity). Another important item included an expansion of wage classifications for enrolled nurses, which would effectively result in some groups of nurses being moved to a higher increment on the pay scale (NSW Nurses’ Association, 28 August 2008, HealthCo Wages and Conditions Claim).

The only family provision sought by the union was for unspecified ‘improved’ paid parental leave. This was important to the union negotiators, however, less important to members, who were more interested in a wages increase which would achieve parity with the public health sector. This lower priority reflects the needs, and the demographics of the workforce, as most of the employees were not in their prime child bearing ages. The union negotiators stated that the members:

‘…view paid maternity leave positively, but it’s not a priority. They wouldn’t want to stop anybody else getting it. They’re astute observers of social trends and they know the social trends emerging, but it’s not for them…’ (interview with union negotiator, 19 September 2008).

The union negotiators were the main catalysts progressing the issue of paid maternity leave.
Initially, there were two main elements to the paid parental leave claim. Firstly, the union was seeking to codify HR policy by having the unspecified paid maternity leave provisions in HR policy included in the collective agreement. While the HealthCo agreement incorporated existing paid parental leave HR policies (cl. 45, *HealthCo Enterprise Agreement 2006-08*), and HospitalOrg’s provisions were solely contained in HR policy, the union was seeking to have the specific quantum of paid maternity leave included in both new agreements. Incorporating HR policy into the agreements was also publicly supported by the union Secretary (NSW Nurses’ Association, 7 October 2008, *HospitalOrg and HealthCo Pay Talks Begin*).

Incorporating the paid maternity leave provisions into the HealthCo agreement would also increase the level of entitlement in some HealthCo workplaces which did not receive any paid maternity leave. This move would not only standardise these provisions across HealthCo workplaces, but would contribute to a common level of paid maternity leave across the whole industry. Negotiating paid maternity leave provisions into these agreements would therefore contribute to a much wider campaign to secure paid parental leave.

The second part of the union’s parental leave claim was for an increased quantum of paid maternity leave, although no specific amount was included in the claim presented to the management negotiator. The claim included details of the monetary items, however, the rest of the claims were only listed, suggesting the importance of the various items (NSW Nurses’ Association, 26 August 2008, *HealthCo Wages and Conditions Claim*). The union’s unwritten paid maternity leave claim was for twenty-six weeks, in line with the Unions NSW position, however, this claim also contained an element of ambit. The more realistic paid maternity leave claim was in line with the conditions available in public hospitals, which had gained fourteen weeks in 2005 (NSW Nurses’ Association, 7 October 2008 *HospitalOrg and HealthCo Pay Talks Begin*). The union negotiators realised the ambitiousness of the twenty-six week claim:

‘(T)he reality is, and this was historical baggage, was that we fall back to the public sector, and they have fourteen weeks. So our mouths say twenty-six weeks, the reality is they [the management negotiators] hear fourteen. And if we get fourteen, we’ll be delighted’ (interview with union negotiator, 19 September 2008).
Against the backdrop of the union’s arguments for paid maternity leave, wider regulatory forces also had the potential to impact on the form of the claim, as well as its success. As well as containing ambit, the union negotiators did not consider that a claim for twenty-six weeks leave was realistic in an environment where paid maternity leave could possibly be provided centrally, through legislation arising from the government’s response to the Productivity Commission inquiry into paid parental leave:

‘…why should an employer move their paid mat leave, when everybody knows that the [Productivity Commission] will be bringing down their report in February/March [2009]? You’d be an idiot, and they’re not idiots...We’ll get something in the agreement that basically reflects current policy…’ (interview with union negotiator, September 19 2008).

It was evident from this statement that while the union’s aspirational goal was twenty-six weeks paid maternity leave in the longer term, and fourteen weeks for the current negotiations, the union negotiators would be satisfied with codifying the current provisions. However, once negotiations commenced, the union negotiators did expand their claim and incorporated a new paid parental element.

6.4 The negotiations: HealthCo

By August 2008, the claim for both negotiations was finalised and endorsed by union members. The union negotiators’ main bargaining strategy for both sets of negotiations was to increase the level of involvement and support from union members, which would then increase pressure on the employers, should this be necessary (interview with union negotiator, 23 December 2008). Accordingly, the union negotiators had also established Bargaining Organising Committees in each organisation to provide advice as the negotiations progressed and act as a conduit between the negotiators and union members. The union negotiators were now ready to commence bargaining with both organisations and presented the claims to the management representatives. Even though both negotiations commenced at the same time, they did not follow the same processes or timing. They are therefore discussed separately here. The timeline for the first negotiations with HealthCo is at Table 6.1.
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<tbody>
<tr>
<td>Pre-negotiations</td>
<td>Negotiations</td>
<td></td>
<td></td>
<td>Resolution</td>
<td>Agreement Finalised</td>
</tr>
<tr>
<td>Claim developed</td>
<td>Members endorsed claim.</td>
<td>Employer working parties examined wages classification structure and continuing education allowance; union drafted clauses.</td>
<td>Employer proposed trade-offs, later withdrew these.</td>
<td>Employer provided written response to claim, included 3.9% pay offer.</td>
<td>Employer agreed to continuing education allowance.</td>
</tr>
<tr>
<td>Included:</td>
<td>- 5% wage rise p.a.</td>
<td>Union negotiated for 14 weeks paid maternity leave.</td>
<td>Union negotiators bargaining to reopen negotiations once possible government paid parental leave scheme known.</td>
<td>Agreement finalised, approved by union members. Included:</td>
<td>Agreement finalised, approved by union members. Included:</td>
</tr>
<tr>
<td>- introduction of continuing education allowance</td>
<td>- expanded wage classifications</td>
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<td>- 3.9% pay rise, with the agreement to be backdated.</td>
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<td>- 3.9% pay rise, with the agreement to be backdated.</td>
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<td>- improved paid parental leave – 26 weeks paid parental leave, inclusion in agreement.</td>
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<td>- 6+3 weeks paid maternity leave</td>
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<td>- 6+3 weeks paid maternity leave,</td>
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<td>- paid maternity leave to be reviewed following any national change</td>
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<td>- paid maternity leave to be reviewed following any national change,</td>
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<td></td>
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<td></td>
<td>- 1 week’s paid adoption and paternity leave</td>
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<td>- 1 week’s paid adoption and paternity leave,</td>
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<tr>
<td>Union member networks established</td>
<td>Union presented claim to employer, informally included 26 weeks paid maternity leave.</td>
<td></td>
<td>Parties agree to review wages classifications and enhanced career paths.</td>
<td>Employer agreed to:</td>
<td>Union agreed to reduction in 25% annual leave loading for one workplace.</td>
</tr>
<tr>
<td>Negotiations commenced.</td>
<td></td>
<td></td>
<td>- 6+3 weeks paid maternity leave</td>
<td>- one week’s paid adoption and paternity leave</td>
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<td></td>
<td></td>
<td></td>
<td>- reopen negotiations once outcomes of Productivity Commission known.</td>
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**Legend**
- Union collective activity
- Negotiations
- Agreement

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2 Table compiled from interviews with union negotiators throughout negotiations and bulletins to members. See Appendix 3.2 for full details.
The HealthCo negotiations began in August 2008 and the management negotiator wanted the new agreement finalised by the end of the year, as a natural end point. According to the union negotiators, bargaining commenced with the employer being professional and efficient, as had occurred previously. The union negotiators believed that the manager ‘wanted to get the negotiations done quickly, not to change anything too dramatically, and to maintain a competitive salary’ (interview with union negotiator, 23 December 2008). Throughout the negotiations the meetings were short and focussed, lasting only an hour or so (interview with union negotiator, 20 October 2008). ‘The manager gets in, sets up, we start at 8.30 [am], finish at 9.30 and it’s [very] direct’ (interview with union negotiator, 20 October 2008).

The management negotiator responded informally to the union’s claim in the same month, however did not provide her own. Over the next few weeks the union negotiators drafted actual clauses on the major issues, such as the continuing education allowance and career paths for nurses; the management team was also engaged in overseeing working parties on these issues. In October 2008, the management negotiator agreed to review the wages classification structures for nurses and also agreed to enhanced career paths. The proposed reclassification of wage structures would reflect the expanding role of nurses and would provide more appropriate remuneration for qualifications gained (NSW Nurses’ Association, 26 August 2008, HealthCo Wages and Conditions Claim). The union too, had established a working party on this issue and both parties agreed to develop a revised classification structure by July 2009 (interview with union negotiator, 27 October 2008).

6.4.1 Bargaining for paid parental leave in HealthCo

The union negotiators expected resistance from the manager to the paid maternity leave claim as the introduction of this provision could be costly for those larger hospitals which did not provide any paid maternity leave at this time (interview with union negotiator, 27 October 2008). The union negotiators argued however, that increased paid maternity leave could contribute to a package to attract graduates, complementing improvements in career structures and other conditions.
They stated:

‘(w)e’ve got younger nurses coming through and part of the pitch to the employer was that we know that generation X was shifting and you want generation Y to come and work for you. You’re involved in all these undergraduate programs to get the student nurses to come in for placements because you know that once you’ve got them, you can hang on to them for a while…it’s a pitch to the next generation. It’s a pitch about recruitment policy (interview with union negotiator, 19 September 2008).’

In the same month (October 2008), the union negotiators argued that the maternity leave provisions with the longest duration should be included in the new agreement. The negotiators explained their position:

‘(t)hey’ve got more than one policy, because they’re an organisation which has grown by take-overs. So they’ve got policies that seem to be anywhere between six weeks paid maternity leave and ten. And we’ve found a place that has twelve weeks, but we don’t know if that’s policy or…So, we’re saying put the best in the agreement and [the management negotiator] was not really comfortable…she’s not as direct about this issue, and that’s because they have at least one hospital with no maternity leave….I suspect they’ve put something in as an over award payment, or concocted policy on the run…’ (interview with union negotiators, 20 October 2008).

At this point the union expanded the paid parental leave claim, to include a clause that negotiations would recommence once the outcomes of the Productivity Commission inquiry into paid parental leave were known. The union negotiators were considering how the existing paid parental leave scheme would interact with any government introduced scheme and therefore wanted to reopen the discussions once the government position was known. However, at this stage this issue had still to be negotiated (interview with union negotiator, 20 October, 2008).

6.4.2 Negotiations for paid parental leave develop

Also in October 2008, the management negotiator introduced a trade-off for the paid maternity leave claim, which would have resulted in employees losing up to a week’s annual leave (interview with union negotiator, 27 October 2008). Initially, the union negotiators did not take this too seriously: ‘we pretty much laughed at [the management negotiator]’ (interview with union negotiator, 27 October 2008). The manager subsequently abandoned this claim – the union negotiators believed she realised it would not constitute best practice (interview with union negotiator, 10
November 2008). Eliminating this trade off was important to the union, as this issue had the capacity to derail the negotiations (interview with union negotiator, 8 December 2008).

The manager did win one concession however. This was to reduce a particular worksite’s twenty-five per cent annual leave loading (which was somewhat of an anomaly in the industry) in return for increased maternity leave (interview with union negotiator, 27 October 2008). The union negotiators agreed to this in December 2008. The union members did not overly object to losing this condition, as they had known for several years that this was likely to occur (interview with union negotiator, 17 February 2008).

In October 2008, two months after the commencement of negotiations, the management negotiator offered six weeks paid maternity leave, and then a further three weeks once an employee returned to work, as an employee retention initiative (interview with union negotiator, 27 October 2008). The union negotiators believed that the manager introduced these provisions because ‘they want to keep up to evolving standards’. The union believed that this would standardise six weeks paid maternity leave, which the manager considered was the most common amount (interview with union negotiator, 24 November 2008). In this context, it was apparent that the management negotiator considered her offer was an increase on the current provisions, which it was for an unknown number of workplaces. The union negotiators, while not displeased with the offer, were opposed to the three weeks payment on return, and considered that employees needed the payment when they were about to commence leave, not when they had an income on returning to work (interview with union negotiator, 27 October 2008).

The union negotiators also believed that some of HealthCo’s hospitals provided more than nine weeks paid maternity leave, and so saw this offer as a reduction in conditions. They were unsure, however, of the exact quantum of paid maternity leave available. Although they repeatedly asked to see any paid maternity leave policies, the management negotiator refused: ‘...the private sector are pretty clear about their policies being their documents’ (interview with union negotiator, 27 October 2008). This refusal could indicate that there were workplaces with a higher level of maternity
leave than that being offered. For those workplaces with a higher level, they would maintain this provision (interview with union negotiator, 27 October 2008), but this was not specifically stipulated in the final collective agreement.

The management negotiator was informed by managers at individual workplaces that not all had even six weeks paid maternity leave in their HR policies. The union negotiators disagreed with this, based on information provided by the union’s network of delegates and the Bargaining Organising Committee, leading them to believe that all sites did provide at least six weeks paid leave (interview with union negotiator, 24 November 2008). It was clear that there was a discrepancy between what was actually occurring in workplaces and the information the organisation’s head office held, so that senior management did not know the precise quantum of maternity leave available (interview with union negotiator, 10 November 2008). The union stated that:

‘(i)t came through to them with a bit of surprise that people were being paid [maternity leave]. They thought they were giving us this fantastic offer…and they didn’t know there were arrangements in each of the hospitals’ (interview with union negotiator, 8 December 2008).

This signals an early, if partial gain for the union as the current policy was to be incorporated into the collective agreement, however this did not fully meet the union’s initial claim. The final negotiated outcome was six plus three weeks, which was lower than the twenty-six and fourteen weeks claims. This was however, an increase on what was perceived to be the most common amount of six weeks.

The new provisions were not to start until the following financial year, because of possible complexities arising with any introduction of a government funded paid parental leave scheme as a result of the Productivity Commission inquiry.

As well as paid maternity leave, union negotiators were also seeking the same amount for adoption leave. The union negotiators found this a difficult issue to negotiate, as even though there were few adoptions (interview with union negotiator, 23 December 2008), and the claim would therefore not be expensive, this issue was less important than others. However, in November 2008, the employer agreed to one week’s paid adoption leave and one week’s paid paternity leave (interview with union negotiator, 23 December 2008). Due to an oversight, the adoption and paternity clauses were not
included in the final agreement, further indicating their lower priority. The manager subsequently agreed to include these items in the agreement, through an exchange of letters with the union (email from union negotiator, 23 March 2009).

While the union negotiators may not have been successful with securing their full parental leave claim, they did gain nine weeks paid maternity leave for employees who did not have this entitlement, as well as an important and innovative paid parental leave entitlement, which is discussed below.

i) An innovative paid maternity leave clause
In October 2008, during the negotiations for the final quantum of paid maternity leave (six plus three weeks), the employer proposed delaying the operation of the paid maternity leave clause until the outcomes of the Productivity Commission inquiry into paid parental leave were known (interview with union negotiator, 27 October 2008). The union expected that the employer would suggest a delay until 1 July 2009, when the parties expected the outcomes of the inquiry to be known and any resulting legislation to establish a national paid parental leave scheme would be operative (interview with union negotiator, 27 October 2008). In return for this delay, the union negotiators wanted negotiations to reopen so parties could discuss how the employer and government schemes would operate together.

By December 2008, the parties had agreed to this position. The new paid maternity leave arrangements were to be effective from July 2009, six months after the commencement of the new agreement (cl. 42 HealthCo and NSWNA/ANF Union Collective Agreement 2008-10). The clause stated:

‘(p)aid maternity leave will be reviewed following any changes implemented on a national basis, such that the employer will not be liable for any cost in excess of that prescribed above’, cl. 42(iv)(c) HealthCo and NSWNA/ANF Union Collective Agreement 2008-10).

This clause was innovative, as it was common for collective workplace agreements to stipulate that no further negotiations will be entered into during the life of an agreement. This was a significant feature of the negotiations. It meant that paid parental leave would be further discussed, at a time when employees were accessing new and possibly increased employer-provided parental leave provisions, in a climate
where the government may also have been acting in this area. The whole issue of paid parental leave would once again be raised.

The inclusion of this clause also shows that the paid maternity leave claim could be amended mid-negotiations, in response to possible future regulatory movements. It demonstrates that national regulation – in the form of social policy development - directly impacted on enterprise level negotiations, even before it was known whether Australia would have a paid maternity leave scheme.

6.4.3 Outcomes of the negotiations
Simultaneously as negotiations were being conducted on paid parental leave, negotiations were also progressing and being finalised on other claims. Table 6.2 compares some of the union’s main claims and outcomes.

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<tr>
<th><strong>Table 6.2: HealthCo Negotiations: Comparison of NSW Nurses’ Association Claim and Negotiated Outcomes</strong></th>
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<tr>
<td><strong>Union Claim</strong>*</td>
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<tr>
<td>5 per cent per annum pay rise over 3 years</td>
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<td>Continuing education allowance from S31.00 to S57.00</td>
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<tr>
<td>Reasonable workloads</td>
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<td>Expansion of existing enrolled nurse wage classifications</td>
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<td>Improved paid parental leave</td>
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***HealthCo Wages and Conditions Claim, 28 August 2008

***Interview with union negotiator, 8 December 2008

***NSW Nurses’ Association, Not Happy HospitalOrg, 30 January 2009

***Interview with union negotiator, 17 February 2009

***cl 11, HealthCo and NSW/ANF Union Collective Agreement 2008-10
The quantum of the wages increase was the last item to be negotiated. The union claim was for a 5 per cent pay rise a year for three years. In late October 2008, the employer offered a 3.9 per cent wage rise per year (interview with union negotiator, 20 October 2008). The union negotiators were eventually satisfied with this, as it would bring the sector closer to parity with nursing employees in the public sector. The pay rates were generally one year behind increases in the public sector, and this wage increase narrowed the gap to six months (NSW Nurses’ Association, 30 January 2009, *Celebrations at...HealthCo*; NSW Nurses’ Association, 26 November 2008, *HealthCo Makes Pay Offer to Nurses*).

Employees would also receive other financial increases. The continuing education allowance was agreed to by the employer, ranging from $32.21 to $59.22 per week depending on the level of qualification (NSW Nurses’ Association, 17 December 2008, *Hospital Org Letting Nurses’ Pay and Conditions Fall Behind*). This was a significant gain for union members, as this would particularly benefit many of the older nurses who were more likely to hold hospital certificates rather than other university or higher education postgraduate qualifications (interview with union negotiator, 24 November 2008). This allowance was paid in recognition of the nurses’ qualifications, which also contributed to increasing the professional recognition of the occupation.

The management representative also agreed to review the wage classifications for enrolled nurses and a working party examined this issue as negotiations progressed. The union too, organised a similar working party, and both parties agreed to meet in April 2009 to reach agreement on the new classifications by 1 June 2009 (interview with union negotiator, 24 November 2008). The union negotiators supported this approach, as they believed the employer was conducting a thorough examination of the issues around wage classifications (interview with union negotiator, 20 October 2008).

The formal negotiations concluded before the end of year deadline and the union negotiators were successful with most of their claims. The union negotiators secured

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8 cl 42(v), *HealthCo and NSW/ANF Union Collective Agreement 2008-10*
9 Email from union negotiator, 23 March 2009
gains with the new parental leave provisions, although they did not achieve all elements. The union was successful in moving the paid maternity leave clause from HR policy to the agreement and securing nine weeks. However, the union was unsuccessful in negotiating for twenty-six or fourteen weeks paid maternity leave. It was also worth noting that the nine weeks paid maternity leave was *maternity* leave, rather than parental leave, thereby limiting this provision to female employees. The union negotiators also did not achieve the same level of adoption leave as for maternity leave, however, employees did become entitled to one week’s paid adoption and paternity leave (which by all accounts, considering the demographics of the workforce, would not be costly). The agreement was then voted on by staff and approved by the end of 2008.

6.5 The Negotiations: HospitalOrg
The same preparations were conducted for both the HealthCo and HospitalOrg negotiations – delegates were elected, a Bargaining Organising Committee for the HospitalOrg negotiations was constituted, and members were surveyed about bargaining items. Table 6.3 contains details the timing and progress of the negotiations.

The first negotiations were held in August 2008, however, from this point proceeded quite slowly, unlike the HealthCo negotiations, which commenced at the same time. The union negotiators presented their claim and the management representative rejected each item in writing, however, the rejection was more considered in the accompanying meeting. In September 2008, the union negotiators drafted clauses and the employer considered the union’s claim, including incorporating paid maternity leave into the workplace agreement (*NSW Nurses’ Association, (undated), HospitalOrg Meeting of 16 September 2008)*.
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<tbody>
<tr>
<td><strong>Pre-negotiations</strong></td>
<td>Claim developed.</td>
<td>Members endorsed claim.</td>
<td></td>
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<tr>
<td><strong>Union member networks established.</strong></td>
<td>Union presented claim to employer. Included: - 5% wage rise p.a. - introduction of continuing education allowance - expanded wage classifications - improved paid parental leave – 26 weeks paid parental leave, inclusion in agreement; reopen negotiations once possible government paid parental leave scheme known.</td>
<td>Employer agreed to consider incorporating paid maternity leave into agreement.</td>
<td>Employer proposed trade-offs, including removal of penalty rates for a public holiday.</td>
<td>Employer wrote to union expressing dismay at offer not being put to union members.</td>
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<tr>
<td><strong>Employer responded negatively to claim.</strong></td>
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<td></td>
<td>Employer proposed: - 1.5% pay rise each 6 months over 3 years - continuing allowance not for casuals and subject to review.</td>
<td>Employer considered 6+3 weeks paid parental leave and incorporating into agreement.</td>
<td>Union proposed 4% pay rise.</td>
</tr>
<tr>
<td><strong>Initial meeting.</strong></td>
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<td>Employer agreed to reconsider incorporating 8 weeks paid maternity leave into agreement.</td>
</tr>
<tr>
<td><strong>Bargaining Organising Committee meetings; organising workplaces; bulletins to members issued throughout.</strong></td>
<td></td>
<td></td>
<td>No agreement on reopening negotiations during life of agreement.</td>
<td>Union expected formal claim by end of month.</td>
<td>Employer then cancelled meetings – told to ‘pause the negotiations’. Employer would not consider reopening negotiations for paid parental leave or incorporating into agreement.</td>
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</tbody>
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10 Table compiled from interviews with union negotiators throughout negotiations and bulletins to members. See Appendix 3.2 for full details.
Table 6.3: Timeline of HospitalOrg/NSW Nurses Ass. Negotiations (cont.)

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<tr>
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<tbody>
<tr>
<td><strong>Escalation</strong></td>
<td><strong>Resolution</strong></td>
<td><strong>Agreement Finalised</strong></td>
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<tr>
<td>Informal meeting with employer – indicated could be agreement if union amended claims on continuing education allowance and improved classifications. Negotiations broke down.</td>
<td>Employer offered 11% over 3 years pay rise, then rescinded.</td>
<td>Agreement finalised. Also included: - parties to meet and talk about paid parental leave once government policy was known. - employer agreed to also pay second period of paid maternity leave without a further 12 months eligibility. Agreement approved by union members.</td>
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<tr>
<td>Union members signed petition.</td>
<td>Employer made second, and comprehensive offer. Union negotiators agreed. Offer included: - increased continuing education allowance of $25 and $35 a week. - 12.4% over 34 months years pay rise. - current paid maternity leave provisions to go into agreement (6 weeks for those up to 3 years’ service; 8 weeks for those with over 8 years).</td>
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</table>

Bargaining Organising Committee meetings; organising workplaces throughout negotiations; bulletins to members issued throughout.
A further meeting occurred in October 2008, at which the management negotiator proposed some trade-offs, including the removal of a penalty rate on Easter Saturday for shift workers who usually worked during the week. The union negotiators did not agree to these (interview with union negotiator, 19 September 2008; NSW Nurses’ Association, (undated), Notes for HospitalOrg Workplace Visits – 20 October 2008). A couple of weeks later, in late October 2008, the management negotiator provided the union with an ‘offer’. The union expected this to be in writing, however, it was made verbally. The union negotiators believed that the offer was not written because the employer was under-prepared and also because this was a negotiating strategy to ‘sound out the limits’ and ‘see what people will react to’ (interview with union negotiator, 10 November 2008). Any further offer could then be made in writing, once the management negotiator had gauged the nurses’ response to the verbal offer.

The employer offered a 3 per cent a year pay rise, paid in two instalments of 1.5 per cent, which would not have achieved parity with the private sector. The management negotiator recognised the importance of achieving parity, but explained to this researcher that the necessary wage increase was not feasible:

‘(i)t’s more than likely that we’ll have not annual increases, but increases each six months, so people will get a feeling that there’s always something coming...The increases in the public sector now put us 3.9 per cent behind the public sector and that’s too much, and we can’t be that far behind...The tolerance was between one and a half and 2 per cent difference and people will tolerate that’ (interview with manager, 27 October 2008).

The manager explained that employees would tolerate this pay differential between the public and private sector as working for a private hospital was ‘different’, as nurses in the private sector did not work with trauma and emergency cases. This implied that it was less stressful than working in the public health system (interview with manager, 27 October 2008), a belief corroborated by one of the union negotiators (interview with union negotiator, 19 September 2008).

The management negotiator also offered a $15 per week continuing education allowance, however wanted this restricted to permanent employees and subject to annual review (HospitalOrg, 19 November 2008, Summary of Status – HospitalOrg Negotiations and NSW Nurses Association). The union negotiators informed him that the wages offer was inadequate but agreed to consider the offer on allowances. The
union negotiators were hopeful that the progress being made with the other private hospital operators would prompt the HospitalOrg manager to provide comparable increases to wages and allowances. They believed that the managers of both enterprises would be monitoring concurrent negotiations and talking to each other (interview with union negotiator, 19 September 2008). As the negotiators explained: ‘(I) think he’s going to realise that his two main competitors are going to go past him and then he’ll come back’ (interview with union negotiator, 20 October 2008).

The management negotiator agreed to ‘consider’ providing nine weeks paid maternity leave and to incorporate this into the agreement. Although the union negotiators considered that the management negotiator would offer eight weeks, in line with provisions in HospitalOrg’s HR policy, their feeling that the employer would match industry counterparts appears to have been proven, as nine weeks was the same amount as HealthCo was offering (interview with union negotiators, 10 November 2008).

The paid maternity leave claim offered by HospitalOrg at this point was six weeks paid before the employee commenced leave and three weeks on return to work, to increase staff retention. The management negotiator, however, was resistant to the claim of reopening negotiations once any government-funded paid parental leave scheme was known. According to the union negotiators, this resistance stemmed from:

‘...(o)ne of the benefits of an agreement from the employers’ point of view was that it provides known costs for a period of time, and so the more things you put in for ‘reopening during the life of the agreement’ the more uncertainty you get’ (interview with union negotiator, 10 November 2008).

While negotiations on some of the bargaining items were progressing, negotiations on others were more difficult. The union negotiators believed that the manager was unprepared for these negotiations, as he did not have a clear position on all of the bargaining items. The union negotiators provided an example of this. They claimed that the manager rejected the union claim on the wages classifications and attempted to end the discussion on this issue. However, the manager then invited another manager into the meeting who then continued discussions and informed the union
negotiators that the company would make an offer on this item (interview with union negotiator, 20 October 2008). The union negotiators described this exchange:

‘(s)o then we posed a couple of questions and tried to tease this out… and asked ‘How does this fit with what we’ve just been told, that you’re not interested [in the issue of nurse classifications]?’ And…[the management negotiator] tried to get himself out of it, and I said, ‘we just want to know if it was on the table or off the table. From what’s just been said it sounds like it’s back on the table’. So it became back on the table… and it’s clear that [the manager] just doesn’t understand’ (interview with union negotiators, 20 October 2008).

This exchange demonstrated a lack of cohesion between the employer representatives as well as under-preparation.

The union negotiators did not present the employer’s 1.5 per cent pay offer to members, as they believed that it would ‘anger people and not move towards a resolution’. While union members’ anger can be harnessed to mobilise members to take collective action, the union negotiators did not appear to consider this the best course of action at this stage. Instead, they were focused on trying to negotiate a better pay rise. They believed it was the manager’s responsibility, not theirs, to inform the members about a pay offer which they considered inadequate (interview with union negotiator, 24 November 2008). This lack of communication, however, contributed to ‘a growing impatience from members’, which the negotiators planned to counter by issuing bulletins to ‘put the responsibility back on management, which was where it squarely lies’ (interview with union negotiator, 24 November 2008). The management negotiator subsequently wrote to the union in mid-November 2008, expressing dismay that the union negotiators had not informed members about the pay offer (HospitalOrg, 19 November 2008, Letter from HospitalOrg to NSW Nurses’ Association).

After this last meeting and just before receiving this letter, the union negotiators amended their claim – they were ‘getting realistic on a number of items’ (interview with union negotiators, 24 November 2008). The major concession made by the union negotiators was a reduced pay claim, to 4 per cent a year. The main items on which the parties still disagreed were the quantum of the pay rise, the clause regarding workloads, and the continuing education allowance (HospitalOrg, undated,
HospitalOrg Wages and Conditions Claim Without Prejudice, November 2008). The management negotiator was also still considering the nursing wage classifications.

6.5.1 Negotiations continue – slowly
Negotiations continued throughout November 2008, however, progress was slow, as demonstrated by the paid parental leave negotiations. The union negotiators believed that the employer had given a verbal agreement that the paid maternity leave provisions would be incorporated into the agreement (interview with union negotiator, 24 November 2008). At this stage, they believed that six plus three weeks paid maternity leave was being discussed. However, the manager informed the union negotiators that he had not agreed to this, but would consider incorporating the current policy of up to eight weeks paid maternity leave into the agreement. This was reinforced in a letter that the manager sent to the union, where he stated that he would ‘consider reflecting our pre-existing [paid parental leave] policy position in [the] agreement’ (HospitalOrg, 19 November 2008, Summary of Status – HospitalOrg Negotiations and NSW Nurses’ Association).

The management negotiator also stated that he would reconsider the issue of paid parental leave in regards to any government funded scheme ‘if/when this occurs’ (HospitalOrg, 19 November 2008, Letter from HospitalOrg to NSW Nurses’ Association). This issue was classified as ‘leave reserved’, which meant that the ‘clause does not provide a particular outcome, but allows the discussion to take place during the life of an agreement’ (HospitalOrg, 19 November 2008, Letter from HospitalOrg to NSW Nurses’ Association; NSW Nurses’ Association, March 2009, Key Issues in the Proposed HospitalOrg/Union Collective Agreement).

A few days later, the manager changed his position on paid parental leave and would not agree to the provisions being incorporated into the agreement or to reopen discussions once the outcomes of the Productivity Commission inquiry were known (interview with union negotiator, 24 November 2008). The union negotiators were informed by the manager that he was under pressure from his superiors, and had been instructed to ‘pause’ the negotiations. The reasons given for this decision were that the new modern award for nurses would be known in a few months, and the management wanted to wait and see what this would contain. According to the union
negotiators, he also reported that the management team also reasoned that the substantive workplace relations legislation would be introduced mid-2009 and that this could also impact on the current conditions and entitlements (interview with union negotiator, 24 November 2008).

The union negotiators did not believe that the award modernisation process would impact on the proposed workplace agreement (interview with union negotiator, 24 November 2008). In regards to the new legislation, the union negotiators also believed that it was preferable for employers to finalise conditions which could be affected by the National Employment Standards before they became operative, as they could restrict the content or operation of related conditions (interview with union negotiator, 24 November 2008).

The union negotiators believed that the employer retracted agreement on incorporating the paid maternity leave policy into the agreement as this could incur costs, and could, in fact, be an opportunity to make savings:

‘(t)he way we understand the Productivity Commission proposal, anything you’ve got in an enforceable instrument will be in addition to the minimum standard. If you haven’t got it in an enforceable instrument, you can mess around with your arrangements…it might be, in fact, an opportunity to save some money…It’s going to be in the context of a general improvement, so you wouldn’t cop too much flak for [reducing paid maternity leave in company policy]’ (interview with union negotiator, 24 November 2008).

However, the union negotiators believed that the paid maternity leave claim would not be costly for the employer – ‘it’s not like there’s going to be an epidemic of pregnancies…” (interview with union negotiator, 24 November 2008).

Essentially then, at this point:

‘...[the management negotiator is] still saying ‘no’ on practically everything, there’s still currently the low pay offer, there’s the slowing down of the negotiation process, so ‘HospitalOrg’ members will be given a gloomier picture than ‘HealthCo’ members’ (interview with union negotiators, 24 November 2008).

While there had been movement on some issues, there were still no firm agreements on any of the substantive issues; the negotiations had been ‘paused’ by the management negotiator, and the union members were becoming increasingly frustrated. Action needed to be taken to overcome the impasse, and this duly occurred.
6.5.2 Escalation and resolution

After four months of negotiations with little agreement, in November 2008 the negotiations escalated to a more senior level and the union Secretary and negotiators met with the HospitalOrg manager (interview with union negotiator, 24 November 2008). The union negotiators stated that the management negotiator expressed concerns to them about achieving wages parity with the public sector, increasing the allowances to the levels being claimed by the union, and changing the wages classification structure for nurses (interview with union negotiator, 8 December 2009). The management negotiator mentioned the forthcoming legislation, but did not, according to the union negotiators, rely on this as an argument for ‘pausing’ the negotiations.

The union negotiators were assertive in the meeting, stating that ‘we did give him the rounds of the kitchen a bit’ (interview with union negotiator, 24 November 2008). The union Secretary asked the management representative to ‘make a serious offer on all issues that could be discussed with members’ (NSW Nurses’ Association, 5 December 2008, Get Serious HospitalOrg! Nurses deserve a better offer). The union negotiators reported that they reiterated that they had made some concessions, that the manager needed to move on some of the organisation’s claims, and that it would not be feasible to inform union members about the three per cent wage offer. The union negotiators stated that ‘it became apparent that he doesn’t want us to put that out to our members as it would get a very cold response’ (interview with union negotiator, 24 November 2008).

The union negotiators also believed that the manager had another motive for not wanting this to be taken members; it was unlikely to be received favourably. This ‘all added up to him trying to delay the process’ (interview with union negotiator, 24 November 2008). They expected that the management representative would then make an ex gratia payment on wages and salaries and this would ‘take the heat out of the negotiations’, which could then be further delayed (interview with union negotiator, 24 November 2008). The outcome of this employer strategy would be that these delays would then result in the union agreeing to a lower wages offer, which would complete the negotiations.
The union negotiators’ predictions were fulfilled. In December 2008, the management negotiator emailed the union, stating:

‘HospitalOrg advises that it will administratively apply a 3% increase to NSW nurses salaries and existing allowances effective from the first full pay period commencing on or after 1/1/09. This increase will be applied in the expectation that further negotiations between the company and the Association aimed at concluding a collective agreement will recommence as soon as practicable in January 2009. This increase was offered on the basis that it was fair to our nursing staff…” (HospitalOrg, 3 December 2008, email from HospitalOrg to union).

Instead of placating staff however, the union negotiators considered that the payment increased staff antagonism towards the employer:

‘…they thought that when three per cent was unilaterally paid from the beginning of the year it would take the heat out, and that was a misjudgement. It actually emphasised in people’s minds that they weren’t being dealt with as people’ (interview with union negotiator, 26 March 2009).

This offer of a pay increase marked a turning point, and negotiations broke down in December 2008, five months after commencing. This action was contrary to the management representative’s stated aim of engaging in ‘pragmatic’ bargaining, however, his actions may have been directed by more senior managers.

The union negotiators were not pleased with this turn of events. They responded by issuing a bulletin to members, in which they noted that the pay rise being offered was less than that which was paid to public health nurses, and also less than that being offered by competitors, who were also engaged in negotiations. The union informed the members about the reason why the employer had offered a wage increase outside of formal negotiations:

‘…(t)his was to frustrate the first round of discussions, make an interim payment to staff to take the pressure off and to delay conditions improvements for a significant period of time’ (NSW Nurses’ Association, 5 December 2008, Get Serious HospitalOrg! Nurses deserve a better offer).

Finally, the union encouraged members to call the union and express their views, and to get involved with the campaign.

The union negotiators’ strategy at this stage was to keep the issue alive over the Christmas period through issuing the bulletin and by visiting workplaces. Union
members were also encouraged to sign a petition which called on the employer to increase the wages to parity with the public health system (NSW Nurses’ Association, 9 December 2008, HospitalOrg Nurses Petition: Nurses Deserve a Better Offer). One thousand members signed the petition, which the union considered a very good response, particularly as it was distributed when staff were taking leave at the end of the year (interview with union negotiator, 17 February 2008).

The union negotiators also stated that ‘members will get increasingly cranky, and this can work for us’. The union was considering not ‘rushing’ back to the negotiations, and conducting more members’ meetings in the interim period. This would also increase awareness, and anger, about the issues. The union needed some time to not only explain the situation to members but also for member reaction to reach the managers, so that they would change their position. The union negotiator explained:

‘...(i)t takes time for things like that to bite. People just don’t know to begin with, so we have to let people know, we have to give examples of differences. It starts to bite when people are made job offers, and if you can see a difference between the two in dollars per hour, you go with the dollars per hour [job offer]...’ (interview with union negotiator, 8 December 2008).

The bulletin, the workplace meetings and the timing of these activities were designed to exponentially increase the pressure on the employer as the negotiations progressed. It was intended that these activities would have a cumulative effect, and member anger could then be used to further increase the pressure on the employer.

The union negotiators issued another bulletin before the end of the year, which compared HospitalOrg negotiations to others being conducted simultaneously with another two private healthcare companies, and the public health sector. This bulletin stated that:

‘HospitalOrg managers have been sending emails claiming that the delay in negotiations was because of the NSWNA being inflexible in negotiations. This is simply untrue (emphasis in original). On 11 November 2008, the Association wrote to all members of the HospitalOrg negotiating team and proposed a pragmatic settlement with many common elements with the HealthCo and [another competitor] agreements. HospitalOrg management have not responded to the revised position and have walked away from negotiations’ (NSW Nurses’ Association, 17 December 2008, HospitalOrg Letting Nurses’ Pay and Conditions Fall Behind).
The bulletin also showed that the HospitalOrg pay offer was much lower than its competitors’ (NSW Nurses’ Association, 17 December 2008, *HospitalOrg Letting Nurses’ Pay and Conditions Fall Behind*). The bulletin had the intended effect, and members informed union organisers and delegates that they were not satisfied with the employer’s offer (interview with union negotiator, 23 December 2008). Some also informed organisers that they would be willing to go on strike.

From this point, the union planned to dramatically increase the pressure on the employer, with more visits to workplaces and bulletins and also through publicity, such as having a stall in a local shopping centre in a regional town, which would be likely to attract some media. In the cities, where publicity was harder to gain, the union planned to undertake activities such as staff wearing t-shirts, badges, leafleting cars, and possibly placing an advertisement in a newspaper. As the union negotiators stated, ‘everybody loves nurses’ (interview with union negotiator, 23 December 2008) and so they were confident that these collective actions would achieve a result. These ideas were generated by the members and also through the Bargaining Organising Committee (interview with union negotiator, 23 December 2008). However, the union negotiators correctly predicted that this level of collective action would be unnecessary:

‘I doubt it will get that far. I think that as soon as HospitalOrg’s management see that members are engaged and that we’re not going to just reduce members’ expectations to fit in with [HospitalOrg’s] plans, they’ll offer something serious’ (interview with union negotiator, 23 December 2008).

The union negotiators met again with the employer, informally, in late December 2008. The manager reiterated that the organisation was finding aspects of the union claim problematic, however, there ‘was a hint that the pay offer could improve if we back off from certain aspects of our claim, particularly the continuing education allowance and the higher nursing classification’ (interview with union negotiator, 23 December 2008). The continuing education allowance would cause the employer to incur considerable expense if granted, as it was for $30 a week, and could potentially be paid to half the workforce.
The next major incident occurred at the end of January 2009, with the publishing of an editorial in the union journal, to a potential audience of 50,000 people (interview with union negotiator, 4 March 2009). The article unfavourably compared the negotiations conducted between the other private hospital companies with HospitalOrg. It stated:

‘...the country’s largest private hospital operator, ‘HospitalOrg’, has wasted months during bargaining talks with NSWNA officials tabling ridiculous offers the company knows are unacceptable to their employees and which are now grossly inferior to the sector standards set by their competitors.

This was a cynical tactic that the Association has become familiar with over the years. The longer they stall, the more money HospitalOrg retains as profits at the expense of nurses’ wages.

This was mean spirited behaviour from a company, which, according to its own annual report, had revenues of $2.7 billion and a net profit of $123 million last financial year’ (NSW Nurses’ Association, 30 January 2008, The Bold and the Cynical).

This was accompanied by further information on the union’s website, which compared in detail the wages and allowances being paid by HospitalOrg’s competitors with HospitalOrg’s offer. The online article also quoted a workplace union negotiator, who stated that nurses were ‘starting to talk about leaving’ (NSW Nurses’ Association, 30 January 2009, Not Happy HospitalOrg).

In February 2009, the management negotiator offered an 11 per cent pay rise over three years, consulted with the organisation’s Chief Financial Officer about this, then informed the union that he could not formally make that offer. The tactic of making an offer and then rescinding it was familiar to the union negotiators: ‘(y)ou float an idea and see what kind of reception it gets’ (interview with union negotiator, 4 March 2009). Communication between the parties continued, with the union ‘feeling self-righteous and indignant’ (interview with union negotiator, 4 March 2009) and planning collective action. Organisers continued to visit workplaces, with each workplace being visited three or four times over the course of the negotiations (interview with union negotiator, 4 March 2009).
The management negotiator then came back with another offer later that month, which broke the impasse. According to the union negotiators, the manager stated that he was recommencing negotiations as a conclusion was needed (interview with union negotiator, 17 February 2009). The parties agreed on a total pay increase of 12.4 per cent over thirty-four months, introduction of a continuing education allowance, and for paid maternity leave to be included in the agreement (see Table 6.4 below). The union stated that the ‘wages proposal matches the HealthCo...agreement...although details of allowances and other conditions vary in each case’ (NSW Nurses’ Association, 26 February 2009, Break-through: HospitalOrg improves wage offer to nurses). The union negotiators secured an agreement which matched HospitalOrg’s competitors and also increased wages and conditions to a more comparable level with the public health system.

While the union negotiators were pleased with the revised offer, they expected recommencing negotiations would be more difficult. The union believed that more meetings would be required before meaningful negotiations resumed and that there would be a bit of ‘bloodletting’, and a meeting or two where the employer would engage in repositioning themselves. The union offered an explanation for this changed position:

‘...(p)robably what happened on their side, was that they came together and their view of what would happen next was that we weren’t just going to shut up and take the lower offer, that they had a choice to either meet our expectations and kill the issue, or keep a rumbling discontent going indefinitely. And they went for the first...’ (interview with union negotiator, 4 March 2009).

The ‘rumbling discontent’ was generated by dissent in the workplace, and also fuelled by organisers visiting workplaces, union bulletins and articles. Newsletter articles were particularly effective in conveying this dissatisfaction to the employer. The union negotiator details how they knew the article was effective:

‘At the meeting on the 11th [the management negotiator] made some brief reference to [the two online articles] and he made some brief reference to senior management...which means his boss [was] aware of them. And at the conclusion of the meeting when we were going to consider how to communicate the new information to staff, he basically made some reference that it would be helpful to ‘keep down the background noise’ [ie, negative publicity]’ (interview with union negotiator, 17 February 2009).
The union negotiators explained the other main factor which they considered encouraged the management negotiator back to the negotiating table:

‘...(o)ne of the things they take into account was that if they see us getting organised and winning the propaganda – or the ‘hearts and minds war’ – with the workforce, they like to head that off. They don’t want us to be too well organised for the next time, they don’t want people to be too confident, so it makes sense to short circuit that if you can’ (interview with union negotiator, 17 February 2009).

The union negotiators’ strategy demonstrates two aspects of campaigning – the necessity for member involvement and a high level of organising, and the value of a local media campaign. The negotiations were then finalised and the staff voted in an online ballot on the agreement, with 92 per cent voting in favour of approving it (email from NSW Nurses’ Association to researcher, 8 April 2009).

6.5.3 Outcomes of the negotiations

The main outcomes of the negotiations, which were conducted from July 2008 to February 2009, were increased wages and allowances which reduced the gap between the public and private sectors. Another significant outcome was that the bargaining parties negotiated a comprehensive agreement which replaced the previous two page agreement. This included all the Family Provisions test case entitlements as well as other test case provisions. This was a significant win for the union, as although employees could already access the test case provisions as they were incorporated into the agreement by reference, including the test case provisions in the agreement underscored their validity. The new agreement also included a range of other clauses which had not been included in the previous minimal agreement, such as the flexible working hours clause. Table 6.4 provides a comparison of the union’s claim with the outcomes, situating the only family provision negotiated – paid maternity/parental leave – within the other claims and outcomes.
Table 6.4: HospitalOrg Negotiations: Comparison of NSW Nurses’ Association Claim and Negotiated Outcomes

<table>
<thead>
<tr>
<th>Union Claim&lt;sup&gt;11&lt;/sup&gt;</th>
<th>Outcome&lt;sup&gt;12&lt;/sup&gt;</th>
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<tbody>
<tr>
<td>5 per cent pay rise over 3 years</td>
<td>12.14 per cent over 34 months – annual increase of 4.28 per cent</td>
</tr>
<tr>
<td>Continuing education allowance from $31.00 to $57.00</td>
<td>Increase of $25.00 to $35.00 per week</td>
</tr>
<tr>
<td>Reasonable workloads</td>
<td>Agreement included a commitment to appropriate staff levels and to address perceived workload problems</td>
</tr>
</tbody>
</table>
| Improved paid parental leave | Several elements agreed:  
- current parental leave provisions included in agreement.  
- No qualifying period for second pregnancies to access paid maternity leave<sup>13</sup>.  
- parties to meet and discuss paid parental leave when government policy known<sup>14</sup>. |

In regard to specific terms and conditions, employees gained wage increases of 4 per cent in the first year, 3.9 per cent in the second year, and 3.75 in the final year, accumulating to 12.14 per cent in just under three years. The wages increase reduced the amount of lag time between the private and public sector – when the private sector wages would ‘catch up’ to the public sector – from twelve to six months (NSW Nurses’ Association, 26 February 2009, *Break-through: HospitalOrg Improves Wages Offer to Nurses*). Allowances were also increased, and the continuing education allowance was introduced, providing $25 per week extra for training up to a post graduate certificate, and $35 for post graduate degrees and diplomas. The agreement also included a process to resolve issues around unreasonably heavy workloads (NSW Nurses’ Association, March 2009, *Key Issues in the Proposed HospitalOrg/Union Collective Agreement*).

<sup>13</sup> cl 47(v), *HospitalOrg and NSW/ANF Union Collective Agreement 2000-11*
<sup>14</sup> cl 44, *HospitalOrg and NSW/ANF Union Collective Agreement 200-11*
The other major gain was that the existing paid maternity leave provisions of six and eight weeks were included in the agreement and, significantly, that paid maternity leave would be discussed during the operation of the current agreement, once any government scheme was known. This clause differs to that included in the HealthCo agreement however, and is as follows:

‘Leave Reserved
The parties to this Agreement agree to meet and discuss:
…2. Paid Parental Leave when the Federal Government’s policy on this matter is known’ (cl. 51 HospitalOrg and NSW/NA Union Collective Agreement 2009-2011).

This wording is simpler than that contained in the HealthCo agreement, and does not refer to the employer being liable for any additional costs. As with the HealthCo outcomes, the union negotiators were unsuccessful in increasing the amount of paid maternity leave to fourteen weeks.

6.5.4 An intangible outcome: lessons for the union negotiators

As well as securing increases to wages and allowances, another outcome was that the union negotiators learned from these negotiations. One union negotiator identified areas where the union could possibly have bargained a little more strategically, or used different tactics to secure better outcomes.

The union and the employer had different conceptions of the organisation. Even though the organisation promoted itself an employer of choice which aimed to be ‘industry leaders in all areas of our business’ (HospitalOrg website, undated), this was not evidenced in these negotiations. The union negotiators’ assumption that HospitalOrg wanted to be an industry leader impacted on the negotiations:

‘…(a) point that [the HospitalOrg management negotiator] was trying to make was that we saw HospitalOrg as most important because it’s the largest, and…our strategy was that if you can move the largest, every one else was going to have to take notice of that…We actually had a discussion about it at one stage and talked about the history of the amalgamations of businesses that have become HospitalOrg and really until about two or three years ago, they weren’t the biggest player. They were a medium player who acquired a significant number of other hospitals in other groups, and they haven’t pictured themselves as being a market leader in terms of wages….We had a different view of the role they should play than they did’ (interview with union negotiator, 4 March 2009).
The realisation that the employer did not value being an industry leader may have resulted in the union organisers rethinking their arguments, and not appealing to a perceived desire by the employer to provide the best working conditions, when this was, in fact, not the case.

As well as understanding corporate aims, arguments particular to the industry sector and workplace also need to be well developed. The union negotiator explained how a misjudged argument impacted on negotiating a claim for the higher classifications:

‘...we probably didn’t think about how we’d argue that with a private health company, we tried to pick up the public health experience and said this must apply to you, and they had convincing arguments about why this didn’t apply to them....We tend to think whatever works in the public sector must work elsewhere, and that’s probably a bit of a fault in the way we think about things’ (interview with union negotiator, 26 March 2009).

Approximately 80 per cent of the union’s members were in the public health system. Additionally, the majority of staff trained in the public system (interview with union negotiator, 26 March 2009), so these two factors resulted in a large focus on the public system and arguments tailored to bargaining in this sector. However, negotiations also needed to be specific to the relevant industry sector.

6.6 Identifying equality bargaining and facilitative and inhibitive factors

The aim of this chapter has been to determine whether or not a form of equality bargaining occurred in these negotiations. What is clear is that an important family provision – paid parental leave – was successfully negotiated, however this was the only family provision negotiated. The improvements to the paid parental leave provisions, for both organisations, included: increased paid maternity leave for those employees in workplaces which did not previously have any; paternity and adoption leave (for nurses employed in HealthCo); incorporating the paid parental leave provisions from HR policy into the agreement, and a commitment to reopen negotiations once the details of any national paid parental leave scheme were known.

This case study shows that even a single equality item can have many parts, which can contribute to, and achieve different aims. These include benefiting different groups of employees, such as mothers or fathers, as well as differential benefits to employees in different workplaces; and achieving regulatory advances, such as reopening negotiations to further discuss paid parental leave at a later date.
This nuanced approach to negotiating paid parental leave does constitute a form of equality bargaining, in line with Heery’s definition of ‘bending the bargaining agenda’ (2006b, 522). Like Heery, the union negotiators negotiated an equality item with multiple parts to benefit female employees. Even so, paid parental leave was the only gender equality or family provision negotiated. The union negotiators did not undertake a broader form of equality bargaining – they did not examine all claims for their potential gendered impact or negotiate any non-traditional gender equality items. The negotiation of paid parental leave can be seen as symbolic of the union negotiators’ commitment to gender equality. Paid maternity leave was negotiated and improved, however, the negotiations did not involve any deeper commitment to progressing gender equality.

6.6.1 National factors

This case study highlights two elements of national workplace regulation which impacted on the negotiations and indirectly contributed to the industrial parties successfully negotiating a family provision, in this case, parental leave entitlements. The first was the impact of a decentralised workplace relations system on bargaining; the second was the Productivity Commission inquiry into paid parental leave and the associated campaign. The impact of social policy and the legislative framework have both been identified as being important external factors for equality bargaining.

i) Decentralisation

The first aspect of national regulation evident in this case study was the industrial relations framework, which contained two elements, as depicted in Figure 6.2. These were firstly, the specific impact of Work Choices and secondly, decentralisation. Firstly, Work Choices impacted on these negotiations as employees who had not previously engaged in workplace bargaining were required to negotiate a workplace agreement as a result of transitioning into the federal industrial relations system. Union negotiators had previously undertaken negotiations for award variations and the State consent award with little involvement from members – almost a ‘servicing’ approach to union activities. The advent of Work Choices changed this and the union increased member involvement, by using an ‘organising’ approach so that members were actively involved in the negotiations. This corroborates previous research on bargaining in the nursing industry, which also found that a decentralised workplace
relations environment not only provided the ANF with recruitment opportunities as issues were negotiated at the local level, but also increased member involvement in negotiating (Bartram et al, 2007, 106).

The union’s desire for members to be involved in bargaining directly impacted on the structure of the union. The changed structure then also influenced negotiations and facilitated equality bargaining. A delegates’ bargaining committee met regularly throughout negotiations to discuss strategies, acted as a conduit between members and the union negotiators, and signalled to the employer that members were engaged and active. While this did not impact directly on bargaining for family provisions, it did contribute to the establishment of a bargaining culture within the enterprise. This did not directly influence the negotiations, however, the increased member involvement increased the union’s strength and bargaining power.

Secondly, these case studies clearly show the effects of a decentralised workplace relations system at the organisational level, which resulted in fragmented outcomes. Employees performed the same tasks to the same level of responsibility but employees in different workplaces were entitled to different levels of paid maternity leave. The differences in conditions resulted from a range of factors, such as management prerogative in establishing conditions for each workplace, but was also a result of industry specific factors, namely, corporate acquisitions. A lack of a central management structure resulted in individual hospital owners and managers determining their own level of paid parental leave.

The impacts of decentralisation highlight other factors required for successful equality bargaining, including the need for bargaining parties to possess knowledge of provisions available to employees. The lack of knowledge about the existing level of paid parental/maternity leave inhibited these negotiations, however the bargaining parties effectively bargained around this obstacle. The existence of a central repository of records covering all workplaces, to enable research and comparisons, was also important for the progression of equality bargaining. While this may seem obvious, the fact that this information was not available did lead to some confusion in the negotiations. The union negotiators were unsure of the exact amount of leave available and the network of delegates from across workplaces provided this essential
local information. Similarly, the HealthCo manager was also uncertain of the level of paid maternity leave, which also reflected a lack of preparation.

ii) Paid parental leave policy development

These case studies demonstrate that national policy development can directly impact on equality bargaining. While it was to be expected that national industrial relations policy would do so, the case studies show that the process of policy development in a related sphere can also be influential. The impact of the State-initiated paid parental leave scheme inquiry was notable in this case study as this was policy development at the national regulatory level, and its reach extended to influencing negotiations at the enterprise level. The impact of this policy development also extended beyond the time of the negotiations, to when the agreement was actually in operation, as the parties agreed to review the clause once the government response to the inquiry was known.

The groundswell of community support for paid parental leave, the Productivity Commission inquiry, the union involvement in this inquiry and a consequent demonstrated commitment all contributed to the NSW Nurses’ Association bargaining for paid maternity leave – this convergence of factors meant that the timing for bargaining for paid parental leave was optimal. Not only did the paid parental leave campaign and inquiry influence union activity, it also influenced both employers in this case study, as they agreed to reopen negotiations on this issue.

However, not only was the inquiry into paid parental leave, and the associated campaign an external factor for bargaining for family provisions, it was also an inhibitive factor, which was noted by one of the union negotiators (interview with union negotiator, 26 March 2009). The anticipated national regulation stymied bargaining for increased parental leave provisions. The union negotiators believed it was difficult to argue for increased provisions when it was likely that the government would be introducing a comparatively generous scheme. Essentially, the negotiating parties decided to adopt a ‘wait and see’ approach to this issue.
6.6.2 Industry factors

A range of industry level factors emerged from consideration of these two case studies, centering around benchmarking. Several elements emerged, including how benchmarking inhibited bargaining for paid maternity leave.

i) Benchmarking

Researchers have found that the ‘business case’ argument is an external factor for negotiating and including equality provisions in an agreement (Colling, 1997, 15; Dickens, 1999; Alemany, 1997). The case studies corroborate this. Even though the union negotiators may have over-used the arguments of the public health system being a benchmark, this argument was still crucial, for without this, the union would not have had such a strong argument for increased pay and conditions for private sector nurses. The HospitalOrg negotiator, too, recognised the need to achieve wages and conditions which were closer to those in the public health system.

Even though the union’s industry claim did not specify the detail of the paid parental leave provisions that union negotiators were required to negotiate, it nevertheless enabled these union negotiators to serve a very similar claim on both employers. The Workplace Relations Act contained sanctions ‘on industrial action in support of pattern bargaining’ (Cooper and Ellem, 2009, 298), effectively preventing pattern bargaining. However, the use of a core or industry claim can, in effect, be seen to be a form of pattern bargaining, and one which was effective in securing increased family provisions. The industry claim also enabled the managers of the two workplaces to compare what each was providing in relation to paid parental leave, and the union negotiators were aware that they discussed such issues and monitored the progress of the others’ negotiations. Pattern bargaining, in these case studies, assisted both the union and management negotiators, ultimately raising the benchmark, so improved conditions may have flowed on through the industry.

The other aspect of benchmarking in this case study was that moving the paid maternity leave provisions from human resources policy into the agreement not only made these provisions legally enforceable, but also contributed to standardising paid maternity leave across the workplaces. This could also then contribute to the establishment of a benchmark in the private health sector for nurses, which the union
could use when negotiating subsequent agreements in this sector. This workplace agreement was one of the first in the then-current round of negotiations, and others in the industry were undertaken shortly after these two.

As detailed earlier, HospitalOrg did not want to be a leader in terms of providing paid parental leave. This leads to the identification of a factor which inhibited bargaining for an equality item: the disjunction between the union and employer’s aims for the negotiations. While Colling (1997, 12) has identified that a convergence of interests can lead to successful equality bargaining, this case study also demonstrated the need for unions to fully understand the corporate goals of the employer, particularly in relation to industry benchmarks, in order to conduct negotiations within the appropriate business context. The union and the HospitalOrg management negotiator had discussed the fact that HospitalOrg did not want to be an industry leader, however it appears the union underestimated the extent of this.

6.6.3 Organisational factors
Two factors at the level of the organisation emerged as contributing to, or inhibiting bargaining for paid parental leave – union leadership and the bargaining relationship. The union leadership demonstrated in these case studies raises issues about the role of union leaders in bargaining for provisions which are more important to the union than to members; and the impact of campaigning, particularly the use of negative publicity. The bargaining relationships, which were very different between these two organisations, also impacted on the negotiations.

i) Union leadership
Reinforcing previous research emphasising the importance of union leadership in progressing and championing bargaining for equality measures (Heery, 2006b, 534; Dickens, 1998), the case studies demonstrate that union leadership contributed to the successful negotiation of paid maternity leave. This occurred at the senior levels of the union, as well as at the negotiating level. The NSW Nurses’ Association was committed to paid maternity leave, and supported the Union’s NSW campaign for the introduction of a national paid maternity leave scheme. The union Secretary publicly committed the union to bargaining for paid maternity leave. The union’s core claim also included ‘improved’ maternity leave provisions, as determined by the Log of
Claims Committee. The exact detail of the claim however, was the responsibility of the union negotiators, who went beyond just negotiating for increased paid maternity leave, to also negotiate an innovative provision so that maternity leave would be discussed in the future. The union negotiators also pursued paid maternity leave through these negotiations, further demonstrating union leadership, as this issue may have been more important to them than to their members, many of whom did not need paid parental leave.

This finding lends support to Gerstel and Clawson’s (2001) research findings, who found that union members may not be supportive of family provisions because they see these issues as being only relevant during a certain period of an employee’s life. This was evidenced in these case studies. As noted earlier in the chapter, the average age of nurses was in their forties, and so paid maternity leave was less of a priority than other terms and conditions, particularly monetary items or those relating to career development. The union members did not consider it a bargaining priority as they did not need it. The union negotiators progressing the paid parental leave claim also demonstrated that a willingness to argue for conditions not of the utmost importance to members can result in equality bargaining.

\textit{ii) Union campaigning}

The union negotiators did not need to undertake the same level of organising and campaigning for both negotiations, with the most intense being conducted in the HospitalOrg negotiations. Union members had been mobilised, through a series of bulletins, by signing a petition calling on the employer to recommence negotiations, and finally a negative media article was published which articulated these concerns and disparaged the employer. These campaign activities were ultimately successful as the employer did re-engage with negotiations.

\textit{iii) The bargaining relationship}

Finally, these two case studies highlight the differences in the bargaining relationships between the union negotiators and both employers, showing that even though the relationships were very different, the outcomes were similar. The union negotiators and HealthCo manager had a professional, pragmatic relationship, and the negotiations generally progressed very smoothly to result in increased family
provisions. In contrast, the relationship between the union negotiators and the HospitalOrg manager became fraught, resulting in the negotiations breaking down. Research shows that a high trust relationship is conducive to equality bargaining (2000b, 202), however these case studies show equality bargaining is also possible within a ‘pragmatic’ and a low trust relationship. The main difference between the two case studies in regard to this issue, is that the negotiations were protracted with HospitalOrg, and that the level of entitlements was lower (evidenced by the lower amounts for the continuing education allowance). This suggests that a more positive bargaining relationship between the parties can result in a higher level of entitlements.

6.7 Conclusion
This chapter presented case studies of negotiations between the NSW Nurses’ Association and two private hospital providers. The chapter commenced with an overview of the working conditions of nurses, including specifically in the two case study organisations. An examination of the union’s responses to undertaking negotiations in the federal jurisdiction for the first time was provided, and this lead into the union’s preparations for these negotiations. The two sets of negotiations were examined, demonstrating the very different approaches of two employers, to essentially the same log of claims. This also precipitated different responses from the union negotiators.

These case studies show that a form of equality bargaining did occur, however was confined to negotiating to increase several elements of paid parental leave. This chapter has identified factors which contribute to successful equality bargaining, including the national paid parental leave policy development. Somewhat surprisingly perhaps, Work Choices also indirectly facilitated equality bargaining, as the union restructured to increase member involvement and commitment. Other factors which contributed to paid parental leave being successfully negotiated included the use of industry benchmarks and union leadership and campaigning. Significantly, these case studies also identified factors which indirectly inhibited equality bargaining, namely, the policy development for paid parental leave, and also the union negotiators misunderstanding the employer’s aims for the negotiations.
FIGURE 6.2
Factors Impacting on Equality Bargaining:
NSW Nurses' Association, HealthCo and HospitalOrg

Facilitative Factors

Inhibitive Factors

Workplace relations framework

Public policy (Productivity Commission inquiry)

- Decentralisation
- Workplace relations legislation - Work Choices

- Productivity Commission inquiry

Employer
- Staff shortages within industry
- Industry benchmarks

Union
- Union leadership
- Benchmarks / standardisation, flow on to other agreements
- Industry claim
- Union media campaign
- Increased member involvement

- Not wanting to be industry leader and union not realising

Internal - union/organisational level

- Awareness of current provisions
- Business case arguments
- Pragmatic relationship between parties (HealthCo)
- Same frame of reference
- Moving provisions into enforceable instrument

- Lack of centralised knowledge of existing provisions
- Low trust bargaining relationship (HospitalOrg)

Outcomes
- Increased and improved paid maternity leave provisions
Chapter Seven

The Liquor, Hospitality and Miscellaneous Union, and SecurityInc: Bargaining for equality in a high trust environment

‘...[paid maternity leave] is the right thing to do. It doesn’t impact on large numbers of people, but that doesn’t mean that its impact isn’t large...’

(Interview with management negotiator, 6 August 2008).

7.1 Introduction

Not all collective bargaining negotiations are initiated by unions. In this case, the employers initiated bargaining in effort to extend the current agreement with some minor improvements. In July 2008, the managers of an organisation which provided security services in Australia’s immigration detention centres (known here as ‘SecurityInc’) presented the Liquor, Hospitality and Miscellaneous Union (LHMU) with a log of claims. The management’s claim included only a few items but one of these was to introduce paid maternity leave. Instead of welcoming this offer, however, the majority of the union delegate negotiators were strongly opposed – a position which conflicted with the union’s stance. This chapter tells the story of how these internal tensions within the union, and between the bargaining parties, were resolved, to result in paid maternity leave being introduced into the workplace agreement.

The chapter commences with an overview of the business operating environment, profiles the bargaining parties and then explains the current family provisions available to employees. The negotiations are detailed, including the dissent amongst the union negotiators. The chapter then considers whether a form of equality bargaining occurred and identifies factors which facilitated or inhibited equality bargaining.

7.2 Background to the negotiations

People who are not Australian citizens are required to have a visa to enter the country, and non-citizens who did not hold a valid visa are ‘unlawful non-citizens’. The Migration Act 1958 required that unlawful non-citizens in Australia be detained. In 1992, the Australian Government introduced mandatory immigration detention to
detain unlawful non-citizens, and detention facilities were expanded in 1994 (Department of Immigration and Citizenship, 2010). In 2003, SecurityInc secured a contract with the Department of Immigration and Multi-Cultural Affairs to operate all immigration detention centres in Australia (SecurityInc, 2008).

The contract for the provision of detention services was being renegotiated in 2008 and at the time of the negotiations, the Department of Immigration and Multi-Cultural Affairs was conducting a major tender for these services and SecurityInc tendered in order to renew their existing contract. The outcomes of the tender process would not be known until after the expiry of SecurityInc’s current workplace agreement in September 2008. The management representatives were therefore not desirous of negotiating a new three year workplace agreement under such uncertain circumstances. The managers were therefore seeking the LHMU’s agreement to a variation to extend the existing agreement by twelve months. If the company was successful with its bid, then a new agreement would need to be negotiated. This would reflect and incorporate new work practices, as these would be required by the new contract (SecurityInc, 14 May 2008, letter to LHMU). The new work practices would require detention centre officers to adopt more of a case management approach to the asylum seekers, rather than just focusing on incarceration. This would not only assist the asylum seekers but would also improve the image of the Australian government and SecurityInc, both of whom had been heavily criticised for their respective roles in detaining asylum seekers.

The treatment of those seeking asylum in Australia has been a contested political issue since 2001, when Australia’s migration laws changed in an attempt to deter asylum seekers (Gentry, 2007). The existence and management of detention centres has also been controversial in Australia, with concerns expressed that SecurityInc would operate for short-term profit rather than the longer term welfare of detainees (Crowley-Cyr, 2005). SecurityInc has also been criticised for negligence and misconduct in relation to detainees, including claims of abuse and violence levelled at security guards (Crowley-Cyr, 2005; Curr, 2008, 46). The Australian Government has been also criticised for incarcerating detainees for extended periods of time, under conditions which did not meet international human rights standards (HREOC, 2008, 18).
Furthermore, not only has the philosophy and practice of incarcerating asylum-seekers been criticised, occupations such as detention centre and correctional officers are also widely stigmatised in society. While detention centre officers are responsible for those who have been incarcerated for seeking unlawful entry to Australia, rather than because they have engaged in unlawful behaviour, there are similarities between the two professions. Tracy and Scott (2006), in a study where they ‘shadowed’ prison officers in two North American prisons, found that the profession was widely disparaged not only because of what the employees did – guard inmates – but also because there are aspects of the occupation which are feminised.

Correctional officers undertake a number of care activities, such as ensuring the physical care and comfort of inmates (Tracy and Scott, 2006, 25). Tracy and Scott found that American prison officers managed the ‘taint’ associated with this care work by a number of methods, including denigrating the caring tasks they were required to undertake (2006, 30). Similarly, King conducted interviews with prison officers in three Australian prisons and found that prison officers viewed undertaking care work as demeaning and believed it lessened their authority (2009, 265). There are parallels here with detention centre officers, who also guard people and are responsible for elements of their welfare. Reinforcing these research findings, the case study detention centre officers also complained about and denigrated the welfare aspects of their job (observation, 24 July 2008).

Against this controversial background and complex working environment, SecurityInc aimed to be a good corporate citizen which respected human rights and valued its employees (SecurityInc, undated, Business Ethics Policy). This came through in the negotiations, as will be shown.

7.2.1 About the bargaining parties
i) SecurityInc

At the time of the negotiations, SecurityInc was a global organisation which provided a range of security services, including ‘secure facility outsourcing’, security officers, security systems, building and managing juvenile and adult custody facilities and managing immigration detention centres (SecurityInc, 2008, SecurityInc Annual Report 2008, 12). In Australia, SecurityInc provided a range of security services for
federal and state governments, including managing prisons, immigration detention centres, health facilities for prisoners and prisoner transportation (SecurityInc website).

In 2008, SecurityInc employed approximately 500,000 employees in 111 countries, with 2,000 in Australia (Hall, 2008) and approximately 800 in detention centres (interview with union negotiator, 11 June 2010). The company, both through corporate literature and in personal interviews with the managers, expressed a commitment to valuing staff, stating: ‘(w)e seek to promote best practice in human rights in the provision of services, as an employer, and in our relationships with all our stakeholders’ (SecurityInc, 7 April 2008, Our Human Rights Policy). This was reiterated by one of the Australian managers:

‘(e)mployees are our business – there’s nothing else. We don’t produce cars or appliances, we produce well trained, professional people who care for the people we care for on behalf of the Australian government. We need good staff who are well trained, and genuinely care about what they do and can think on their feet, and who do a little bit more than other staff in a typically blue collar industry. So if we want staff like that, they’ll have expectations that they’ll be treated properly and will have access to various benefits and [be] paid appropriately’ (interview with manager, 6 August 2008).

In 2008, SecurityInc’s Australian workforce was male-dominated, although this was changing as increasing numbers of women were being employed. SecurityInc’s workforce was also ageing and becoming more culturally diverse (interview with management negotiator, 6 August 2008). The company was keen to encourage this diversity, as they saw tangible business improvements accruing from a more diversified workforce who could relate to a wide range of detainees (interview with manager, 6 August 2008).

ii) The Liquor, Hospitality and Miscellaneous Union
Employees were represented by the LHMU, which, at the time of negotiations, had 120,000 members (LHMU, undated (a)). The LHMU represented low paid employees, many of whom were women, migrant, casual or part-time and in a diverse range of manufacturing and service industries including property services, hospitality, children’s services, health and aged care and manufacturing industries (LHMU,
undated (a)). An LHMU official colourfully described the occupations covered by the union:

‘If you can think of a job that was done in an eighteenth century manor house and think about how that job has evolved into a job that someone would do now, that person is probably an LHMU member’ (interview with union official, 11 June 2010).

In other words, LHMU members were employed in many of the lower status, lower paid jobs in society, such as cleaning, serving in restaurants and as hotel room attendants. Occupations higher up the occupational ladder were also covered (and which could also be traced back to the eighteenth century, to continue the analogy), including child care workers, gardeners, security officers, and hospital attendants.

The precise union density in SecurityInc is unknown due to difficulties in obtaining accurate data, however it was around 40 per cent, based on June 2010 figures (interview with union official 11 June 2010; email from union official, 21 June 2010). These figures also showed that the membership was male-dominated, with men making up 60 per cent of members (LHMU, 21 June 2010, email from union negotiator). Male detention centre officers tended to have a background working as security officers, where union membership was very high – 100 per cent in some enterprises, as security officers could be subjected to physical assaults from customers visiting casinos or hotels, and so needed the union to represent them in any employer-initiated inquiries arising from such incidences. Female detention centre officers tended to come from a more diverse range of occupations, which also included being security officers but in workplaces where violence was less likely, such as airports (interview with union official, 11 June 2010).

**iii) The bargaining relationship**

The two bargaining parties enjoyed a high trust, professional bargaining relationship. In part this emanated from SecurityInc wanting to be seen to be as a good employer and a good corporate citizen, and so the company fostered a positive relationship with unions. SecurityInc’s corporate literature stated that ‘long-term relationships with employees and their representatives, including trade unions, can help us raise standards wherever we operate’ (SecurityInc, undated, *Corporate Social Responsibility – Our Employees*). The company also listed the relatively high levels
of union density in workforces in various countries\(^1\), particularly in comparison to the industry average. For example, in Europe the workforce was unionised, and 55 per cent of employees were union members, compared to an industry average of 46 per cent (SecurityInc, undated, Corporate Social Responsibility – Our Employees).

In 2008, the parent company of SecurityInc signed an ‘Ethical Employment Partnership’ with Union Network International, a global union, ‘which set(s) out how the organisations will work together to raise employment standards in the group and the wider industry’ (SecurityInc, 2008, SecurityInc Annual Report 2008, 31). SecurityInc’s head office stated that implementing this agreement would ensure that the organisation ‘maintain its position as a leading global employer’ as well as ensured that employees were involved at the local level (SecurityInc, 2008, SecurityInc Annual Report 2008, 31).

A local Memorandum of Understanding (MOU) was negotiated between the LHMU and SecurityInc. The MOU formalised a high trust relationship, and parties agreed ‘to establish and operate under protocols which provide mutual respect, recognition and cooperation’ (SecurityInc (Australia) Pty and LHMU; Memorandum of Understanding, May 2007). This included providing paid time for union training for delegates, union recognition, enabling the union to make presentations at inductions for new staff and providing new employees with a union membership form at the induction. In the industrial relations environment of the time, these clauses would not have been allowable in a collective agreement as the Workplace Relations Act prohibited a range of clauses from being included, including those relating to trade union training and union right of entry (Sutherland, 2009, 109; Pittard, 2005). The fact that these clauses were in an enforceable instrument demonstrates the high trust relationship between the parties.

The MOU also reiterated the principles contained in the workplace agreement, which stated that ‘(m)utual co-operation will be a feature of this Agreement between the parties’ (cl. 5.1, SecurityInc/LHMU Certified Agreement 2005). This mutual co-

\(^1\) The level of union density in Australia was not included in this list.
operation was also voiced by one of the SecurityInc management negotiators, who stated:

‘...(w)e do try and maintain a good working relationship [with the union]. It helps us understand what’s going on with the workforce, as there are things that our workforce will share with the union faster than with us, it can raise flags that if we deal with them promptly, issues can be dealt with quickly. If we can deal with it fast, often there is no issue. We do try and talk and communicate and recognise the position that union officials have (interview with management negotiator, 6 August, 2008).

As well as the managers respecting the role of the union, SecurityInc’s Managing Director was also respected by the leading union negotiator (observation, 24 July 2008). This stemmed from a long joint working relationship and from engaging in previous negotiations together. This positive relationship was important in enabling the two parties to work together, which also impacted on bargaining for paid maternity leave, as will become evident. The Managing Director was supported in the negotiations by another two male directors – a human resources director, and an Assistant Director of Detention Services.

7.2.2 Preparing for negotiations

The LHMU is a federation, consisting of a national office and eight state and territory branches. The main governing body of the union is the National Executive, which consists of a National Secretary and two Assistant National Secretaries, who are elected from the Branch Council, which is made up of union delegates and paid officials. Union policy is determined by the National Council, which meets annually, and the Union Executive then oversees the implementation of policy. Figure 7.1 depicts the union structure and claim development (interview with union official, 7 December 2009).

It should be noted, however, that these processes – described in the Figure 7.1 and in this chapter – may not be indicative of the union’s usual claim development, as these negotiations were not standard, being only for a variation to the existing agreement, rather than for a completely new agreement. Also for these negotiations, the union did not develop its own claim and instead responded to the employer’s claim, an unusual occurrence in these case studies.
While union policy was set by the National Council, the union did not have any specific industry or core policies supporting bargaining for equality items. However, the union had campaigned for improved wages and conditions for employees in numerous female dominated industries, including child care, cleaning and hospitality (LHMU, undated(b)). The union had also been a party to the work and family test cases, excluding the 2005 Family Provisions case. The LHMU was active in the campaign for paid maternity leave, had made a submission to the Productivity Commission inquiry, appeared at the associated hearings, and supported the Unions NSW campaign (LHMU, 2008; Productivity Commission, 2008d; interview with union negotiator, 24 July 2008). The union had a long history of campaigning for equality issues, including support for bargaining for paid maternity leave (interview with union negotiator, 11 April 2008).

For these negotiations, the union bargaining team consisted of seven delegates elected by members, one from most Australian States or Territories, and three LHMU officials, including a senior union official who led the negotiations. The union negotiating team included three women. None of the delegates had been involved in negotiations with SecurityInc before, and their lack of experience was evident in the
negotiations, ultimately impacting on bargaining for paid maternity leave. Their lack of experience was compensated for by the wealth of experience and knowledge held by the lead union negotiator, who had conducted the previous negotiations (interview with union negotiator, 24 July 2008). The bargaining team was supported by organisers in each state, who provided information from the leading union negotiator to union members and delegates and further explained issues (observations, 24 July 2008).

7.2.3 Existing conditions and the claim

The existing collective agreement contained all of the minimum family provisions, as set through test cases and legislation, including just over five days per year carer’s leave (cl 29, SecurityInc/LHMC Immigration Detention Centres Certified Agreement 2005), although at the time, the carer’s leave minima in the Workplace Relations Act enabled employees to take up to ten days carer’s leave a year. The carer’s leave provisions had been increased under Work Choices, subsequent to the making of the agreement. The agreement also included twelve months unpaid parental leave as per the legislation, and also the additional parental leave entitlements as established in the Family Provisions test case (cl 30, SecurityInc/LHMC Immigration Detention Centres Certified Agreement 2005). The company did not provide any paid parental/maternity leave.

The only above minimum condition provided in the agreement was a clause requiring managers to give consideration to an employees’ family responsibilities when changing an employee’s working hours (cl. 29; 30; 23.1 SecurityInc/LHMC Immigration Detention Centres Certified Agreement 2005). However, a SecurityInc manager considered that employees were provided with above minimum conditions, depending on their needs and if they requested them. This manager explained that they tried to accommodate the individual circumstances of individual employees, to ‘make it easier for them to continue to work for us’ (interview with management negotiator, 6 August 2008). This manager stated that the company had accommodated various requests, including the needs of employees with family responsibilities, requests for compassionate leave, leave without pay, and changing an employee’s workplace to a different site to accommodate family responsibilities (interview with management negotiator, 6 August 2008). These requests from employees were
granted on an ad hoc nature by their supervisors and not formalised in human resources policy or in the workplace agreement.

In regards to these negotiations, the lead union negotiator was committed to bargaining for paid maternity leave, as this provision would benefit employees, and society generally (interview with union negotiator, 24 July 2008). However, since the aim of these negotiations were to extend the current agreement with an increased pay rise and minimal increases to conditions, the union negotiators determined to wait for the employer’s claim, and so did not have a claim of their own (LHMU, 28 April 2008, email from union negotiator to union officials). Even if the union negotiators had decided to present their claim first, the union did not have a standard bargaining claim for use with all negotiations. As one official explained, the membership of the union was so diverse, that it would not be appropriate to have a core claim covering industries and workplaces with such disparate conditions. The absence of a core claim also stems back to the union’s history of amalgamations with other unions, giving rise to diverse workplaces and member needs (interview with union official, 7 December 2009).

An unspecified amount of paid maternity leave, however, was included in all union claims, across diverse workplaces, in negotiations during 2008 (interview with union negotiator, 24 July 2008), reflecting the high profile of this issue at the time. The lead union negotiator stated that as a result of this campaign, employers ‘were almost waiting for unions to show up with paid maternity leave claims’ (interview with union negotiator, 11 April 2008). Previously, unions used a range of arguments to convince employers of the need for paid maternity leave, however, this negotiator believed that successfully negotiating paid maternity leave would be much easier in the current social policy/bargaining environment.

7.3 The negotiations

Negotiations commenced in April 2008, as depicted in Table 7.1, with a preliminary meeting held between the management representatives and the lead union negotiator to discuss the managers’ proposal for an extension of the workplace agreement. This was followed by a letter in May 2008, in which SecurityInc’s HR Director proposed that:
‘...(t)he agreement would include an increase in salary and allowances which would be negotiated between the parties...The agreement could also deal with any short term critical issues that the parties felt needed addressing immediately’ (SecurityInc, 14 May 2008, letter to LHMU).

The information about the proposed extension was provided to the lead union negotiator, who then provided this to union organisers, who were encouraged to discuss this with workplace delegates (LHMU, 16 July 2008, email from lead union negotiator to organisers). These communications occurred prior to the first formal negotiations.

The first and only negotiating meeting between a full union bargaining team and SecurityInc negotiators was held in July 2008 at the union’s offices. Union officials caucused just before the meeting and the lead union negotiator explained the employer’s proposal. The delegates provided feedback that they were comfortable with exploring the idea of an extended agreement but were less committed to a twelve month extension as this could delay negotiating a full workplace agreement (observation, 24 July 2008). Formal negotiations subsequently commenced when SecurityInc negotiators entered the room.

This meeting provided the managers with an opportunity to share information with the union and present their claim, which then generated considerable discussion. The delegates were focused on understanding the consequences if the organisation was not awarded the new contract, as this could possibly lead to redundancies. The managers’ claim contained the proposal that the agreement be extended for another twelve months, as well as a 3.5 per cent pay rise, with a further 0.5 per cent paid as an employer contribution to superannuation, and four weeks paid maternity leave for employees who had twelve months continuous employment (SecurityInc’s, 21 July 2008, SecurityInc’s Offer for Detention Services Industrial Agreement with LHMU).
Table 7.1: Timeline of SecurityInc/Liquor, Hospitality, Miscellaneous Union Negotiations

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| Union members surveyed. | Employer wrote to union and formally proposed:  
- extension of current agreement  
- increase in salary and allowances  
- ‘short term critical issues’ could also be included in agreement. | No formal negotiating activities. | Formal negotiations commenced.  
Employer provided log of claims, included:  
- 12 month extension of agreement  
- 3% pay increase plus 0.5% employer superannuation contribution  
- 4 weeks paid maternity leave.  
Delegates expressed concerns about the offer:  
- quantum of pay rise was too low,  
- quantum of paid maternity leave also too low and should also include casual employees  
- proposed reduced timeframe for starting next negotiations. | |
| Pre-negotiating meeting held between SecurityInc management and senior LHMU officials. | | |
| | Organisers and delegates discussed proposed employer claim with union members; union issued bulletins. | Delegates sought feedback from members on offer. | |

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2 Table compiled from interviews with union officials throughout negotiations, bulletins and emails to members. See Appendix 3.2 for full details.
# Timeline of SecurityInc/Liquor, Hospitality, Miscellaneous Union (cont.)

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<td>Union responded to employer in writing:</td>
<td>Teleconference between union delegates and officials held.</td>
<td>Joint management/union staff meetings held.</td>
<td>Agreement finalised, approved by union members.</td>
</tr>
<tr>
<td>- wage offer rejected</td>
<td>Union wrote to employer, rejected offer, called for 6% pay rise.</td>
<td></td>
<td></td>
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<tr>
<td>- paid maternity leave considered too low</td>
<td>Union verbally requested paid paternity leave.</td>
<td></td>
<td></td>
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<tr>
<td>- wanted stress leave included</td>
<td>Employer responded:</td>
<td></td>
<td></td>
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<tr>
<td>- proposed extension of agreement for further 8 months.</td>
<td>- reiterated 4.5% pay offer</td>
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<tr>
<td></td>
<td>- rejected stress leave</td>
<td></td>
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<td></td>
<td>- agreed to commence negotiations for next agreement by 1 June 2009.</td>
<td></td>
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<tr>
<td></td>
<td>Further teleconference with union officials held.</td>
<td></td>
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<tr>
<td>Employer agreed to union’s proposal of 6 weeks paid maternity leave.</td>
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<tr>
<td>Organisers visited workplaces.</td>
<td>Union drafted clause for paid maternity leave for casual employees — employer agreed.</td>
<td></td>
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<td></td>
<td>Union issued bulletin encouraging members to accept employer offer.</td>
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The company decided to offer four weeks rather than a higher quantum of paid maternity leave, as they wanted to ‘start slowly with something pretty simple and fairly basic’. The organisation saw itself as being fairly conservative in their human resource policies and not ‘cutting edge’ (interview with management negotiator, 6 August 2008). It can be seen therefore, that while the organisation was willing to increase employee entitlements by offering above minima conditions, the managers were not willing to take the next step of being world leaders by offering more generous provisions.

7.3.1 The union negotiators discuss paid maternity leave
At the July 2008 negotiations, the managers left the room after they had presented their claim so the union delegates and officials could discuss. The delegates were not satisfied with the pay offer, considering it too low. The lead union negotiator also did not support the claim of four weeks paid maternity leave, considering that also too low; another paid union official considered that regular casual employees should also be entitled to paid maternity leave. While this was the position eventually advanced to SecurityInc, there was much internal discussion – and disagreement – amongst delegates about the paid maternity leave offer (observation, 24 July 2008).

Several of the delegates did not support the introduction of paid maternity leave at all, advancing arguments on industrial, personal and legal grounds. The main opposition came from one delegate who wanted mental health/stress leave days instead of paid maternity leave, as she believed that this would benefit a greater number of employees. She therefore argued that the union should trade off the offer of paid maternity leave for mental health/stress leave days. The lead union negotiator also agreed that a greater number of employees would benefit from stress leave than would benefit from paid maternity leave but still advocated for the introduction of paid maternity leave.

The same female delegate firmly believed that having a child was a personal decision which should be funded individually. Delegates also agreed that the government already provided generous financial support for parents and therefore believed that paid maternity leave was unnecessary. The delegates also made a number of quite
heated comments, such as ‘if you can afford the petrol to get to the hospital, you can afford to have the baby’. Overwhelmingly, however, objections came from one female delegate (observation, 24 July 2008). The lead union negotiator stated that this delegate was representative of single employees, who had previously shown opposition to benefits specifically for parents (interview with union negotiator, 24 July 2008).

One of the male delegates felt that a paid maternity scheme was discriminatory, and fathers should also be able to access paid paternity leave. The union supported the introduction of paid paternity leave and this was subsequently raised with the employer. However, at this initial negotiating meeting, the lead union negotiator privately explained to delegates – who were new to the bargaining process – that conditions in agreements are gained incrementally, and paid maternity leave could be introduced in this agreement and then paid paternity leave could be negotiated into subsequent agreements (observation, 24 July 2008).

The lead union negotiator countered the delegates’ opposition to paid maternity leave by explaining that the negotiations were an opportunity to secure a pay rise as well as paid maternity leave – there did not need to be a trade-off between the two. Other items could be negotiated when bargaining for the full agreement, which may have been only six months hence. The union negotiator was cognisant of the delegates’ concerns, however and agreed to put forward a claim for stress days and an increased quantum for the pay rise as well as for increased paid maternity leave. Significantly, this negotiator did not outline the benefits of paid maternity leave, instead treating it as a given that this was an important bargaining item which needed to be included in the agreement (observation, 24 July 2008).

The negotiations reconvened after this discussion. The offer of a 3.5 per cent pay rise was rejected, with delegates informing the employer that they required six per cent. The union negotiators were dissatisfied with the current agreement being continued for another twelve months, and considered that a nine month extension would serve the same purposes (observation, 24 July 2008). The paid maternity leave claim was not rejected outright as advocated by delegates, however the union negotiators did express their concerns. The lead union negotiator explained that six weeks paid
maternity was the current community standard in the private sector, and so the management offer of four weeks was inadequate. The union officials also proposed that any paid maternity leave scheme be available to casual employees (observation, 24 July 2008). One of the union delegates also proposed a claim for stress leave.

The meeting ended on a cordial note, with the union informing the managers that they would take the management claim to members. The management representatives agreed to consider the union’s initial rejection and proposed amendments.

7.3.2 Divergence between union negotiators
There was a convergence of interests between the lead union negotiator and the management representatives on the issue of paid maternity leave, and a willingness to work together on the other bargaining items. The union delegates, however, presented a marked contrast, generally not supporting the introduction of paid maternity leave or the lead union negotiator’s position on this, and very decidedly not supporting the managers’. However, there was also unity between the union negotiators on other claims, agreeing that the pay rise was too low, and also concern about the length of the proposed agreement. Generally, however, the union delegates presented a contrasting and more hostile attitude towards the negotiations than did the more experienced union and management negotiators.

These mixed attitudes were also demonstrated by a level of trust being evident between the main negotiators of both bargaining parties, which was not shared by the delegates. The lead union negotiator twice said to delegates in the caucusing sessions before and during the meeting that he considered the Managing Director of SecurityInc to be ‘straight up’ (observation, 24 July 2008). Additionally, the union negotiator informed the managers that the union was engaging in negotiations on trust, and delaying negotiating a full log of claims in the expectation that more substantive negotiations would occur once the outcomes of the tender process for the government contract were known (observation, 24 July 2008).

The managers also expressed trust in the union, as while not being able to divulge the contents of their tender, they did provide the union and delegates with information about their tender partners, with a request that this be kept confidential (observation,
24 July 2008). The employer also offered to establish a joint working party to progress change management if they were successful in gaining the contract. The main union negotiator also agreed that there could be a joint management/union message to staff if the contract was awarded to the employer. While both the lead union negotiator and the management negotiators demonstrated a level of trust and were willing to work together, the delegates, however, did not share this approach.

The delegates quite vehemently rejected the initial offer by management. They were also critical – even to the point of being hostile – of the managers on a range of other workplace issues, such as the need for detention officers to undertake client service activities as well as the traditional detaining/guarding role (observation, 24 July 2008). This attitude was noted by a management representative, who explained that the employer understood that the union had a role to play, and that this sometimes involved strategies and a degree of posturing. The management negotiator highlighted what he considered to be an example of this:

‘…many of the staff delegates do what they think a union person would do, and what they’ve seen on TV and what they’ve read in newspapers and they behave to a type they think they should. And to a degree there’s an expectation that we will be playing to an opposite type, because that’s what happens on TV. And because of that I think they misappreciated what was being offered…’ (interview with management negotiator, 6 August 2008).

The delegates’ reaction to SecurityInc’s initial 3.5 per cent pay offer also exemplified this posturing by union delegates. A management negotiator explained that:

‘…we all read the paper the day before, which said inflation was running at 4.5 per cent, and to walk in and offer 3.5 per cent is a strategy. Had the union delegates just sat back and said ‘why would they be coming in offering 3.5 per cent, when the papers are saying 4.5 per cent, and we know how they behave, that the workforce is important to them? What’s going on here?’…instead of reacting to the 3.5 per cent in a very predictable way, overly emotive, while at the same time asking for 6 per cent…They misunderstood and, I think, got so caught up in their own responses to what was happening that they didn’t watch the three of us and actually listen to what we were saying’ (interview with management negotiator, 6 August 2008).

The union delegates did not pick up on cues that the management team may have been willing to offer a higher wage increase – however one which was unlikely to
extend to the 6 per cent they had requested. This situation tended to reflect that the union delegates were inexperienced negotiators and unaware of bargaining strategies. In interviews after the initial negotiations, both the lead union and management negotiators were somewhat disappointed with the reaction of the delegates to the managers’ offer. The lead union negotiator was not surprised by the delegates’ opposition to paid maternity leave, as he had encountered this response in other workplaces, especially from older female employees, as well as single employees (interview with union negotiator, 24 July 2008). This union official also believed that the position adopted by the most vocal delegate – that staff should have mental health days instead of paid maternity leave – indicated that the union delegates did not fully understand the nature of bargaining. The senior union official considered that the union had not been successful in educating delegates that they could ask for multiple claims to meet different needs (interview with union negotiator, 24 July 2008). This negotiator noted that the union needed to undertake more activities to educate delegates/negotiators about the nature of bargaining and how negotiations can be used to extend employment conditions to benefit future generations of employees (interview with union negotiator, 24 July 2008).

Both the main union official and management negotiators believed that the delegates were being somewhat limited in their consideration of the paid maternity leave claim. The lead union negotiator believed that this rejection showed that people were adopting a fairly ‘selfish’ approach to negotiations, only focusing on their immediate needs, rather than seeing paid maternity leave as a societal concern and benefit (interview with union negotiator, 24 July 2008). Similarly, one of the managers was disappointed that several delegates seemed to focus only on their own individual circumstances (interview with management negotiator).

This same manager also didn’t think that delegates were as well prepared as they may have been to represent the collective interests of their colleagues (interview with management negotiator, 6 August 2008). Similarly, the union official discussed with delegates that the wider union membership may have viewed paid maternity leave differently from them and recommended that delegates consult further (observation, 24 July 2008). The possible under-preparation of the delegates may also have stemmed from the unusual process of these negotiations, where the union did not
develop a claim and instead waited to respond to the employer’s claim. While the delegates were supplied with the letter from the employer proposing an extension to the current agreement and encouraged to discuss this with members, delegates did not actually develop a formal response to the employer’s claims prior to the first negotiating meeting and so may not have consulted as a matter of course.

This manager also predicted the lead union negotiator’s response to the delegates’ position:

‘…I think the union people will talk with the delegates and say ‘look, we think this is something you should reconsider, and it’s not a bad idea. It will not impact in any way, shape or form on this other problem, of your salary rate. I think that behind the scenes, the union will move them back to a position of accepting it…[we’ll] put it in there because it’s the right thing to do. It doesn’t impact on large numbers of people, but that doesn’t mean that its impact isn’t large’ (interview with management negotiator, 6 August 2008).

As it turned out, this manager’s observation was borne out – suggesting he was quite astute and familiar with the union with which he was negotiating. His statement also demonstrated the progressive nature of the employer in this instance, compared to the recalcitrance of the union delegates.

7.3.3 Consultation, further negotiations and resolution

Throughout July and August 2008, meetings were held with union members at the various workplaces and feedback on the managers’ claim was encouraged (LHMI, undated, *Meeting between LHMI and SecurityInc*). Members’ responses to the paid maternity leave claim were mixed:

‘…(m)embers say that it [paid maternity leave] is not enough – but it depends on who you’re talking to. The more mature [i.e. older] people don’t see a need for it…the general context is that more would be better, but that it’s a move in the right direction. In terms of our mob, it’s not a specific and enormously wide felt [issue]. Obviously, young women have issues with it, but the majority are middle-aged and over, and men as well. It can be made into a bigger deal politically, but from this standpoint it’s not a major issue’ (interview with union negotiator, 5 September 2008).

This case study demonstrates the wide range of possible responses from members and employees to the introduction of paid maternity leave, with not all in favour.
In August 2008, the lead union negotiator wrote to the employer formally rejecting their offer, based on feedback from members. The letter confirmed the union negotiators’ initial rejection of the managers’ claim, including for paid parental leave as union members considered it too low, however, not proposing any higher quantum (letter from LHMU to SecurityInc, 18 August 2008). The union also proposed the introduction of a clause outlining the timing for the recommencement of negotiations, contingent on the government contract being finalised.

The HR Director wrote back to the union and provided a revised claim. This incorporated a clause on the timing of the negotiations based on the union’s draft clause, and included an increased wage offer of 4.5 per cent annum, with a commensurate increase in allowances, and increased paid maternity leave to six weeks (SecurityInc, 22 August 2008, letter to LHMU). The increased paid maternity leave provisions were offered as ‘we were going that way as an organisation anyway, so we decided that six weeks was more reflective of industries similar to ours’ (interview with management negotiator, 24 September 2009). The HR Director did not seek any trade-offs, suggesting the management negotiators had started low with their claim.

In September 2008, the senior union negotiator held two teleconferences with delegates and organisers to discuss the managers’ revised claims and members’ responses. Even though they were invited and encouraged to participate, delegates did not take part in the teleconferences, leaving it to the paid union officials to make decisions and progress negotiations (observation, 1 September 2008). This indicated that these negotiations - being for an extension of the current agreement rather than consisting of full negotiations – were not a high priority for the delegates. This was not seen as unusual by the lead union negotiator, who believed that the delegates were satisfied with the input they had provided so far and were content to leave the remaining negotiations to the paid union officials (interview with union negotiator, 1 September, 2008). The issue of paid maternity leave, especially, was not a major issue during the teleconferences, as delegates had previously informed the union officials that their main concerns were wages and the commencement date of the new agreement. The lead union official wrote again to the employer after the
teleconference, requesting a six per cent pay rise, and for the issue of stress leave to be addressed (LHMU, 5 September 2008, letter to SecurityInc).

At this stage, the lead union negotiator was still pursuing increased parental (including paternity) leave provisions. As a follow up to a delegate’s suggestion that paid paternity leave as well as paid maternity leave be provided, the lead union negotiator held informal discussions with the HR Director (LHMU, 7 September 2008, email from lead union negotiator to delegates). Ultimately, however, this claim was not successful (SecurityInc, 17 September 2008, letter to LHMU). The managers were not supportive of the paternity leave claim as the organisation operated on ‘quite small’ profit margins, and so decided that ‘what money we have, we’d put into maternity leave, not paternity leave’ (interview with management negotiator, 24 September 2008).

The employer rejected the claim for stress days but reiterated that employees could use sick leave, and also make use of an Employee Assistance Service, a confidential counselling service available to employees, funded by the employer. The employer reiterated that the contract negotiations were uncertain and also informed the union that they were not seeking any productivity efficiencies to offset the increased wages and paid maternity leave offer (SecurityInc, 17 September 2008, letter to LHMU.). The employer did however, agree to commence negotiations for the next agreement by 1 June 2009, nine months after the expiry date of the current agreement, rather than their original twelve months. This assisted in allaying the union delegates’ concerns about any possible delay in negotiations, which could then delay the increased wages and improved conditions.

Following these communications, in October 2008 the union issued a bulletin outlining the status of negotiations, the managers’ final offer, and encouraged members to accept this. The union explained that the management negotiators had offered a 4.5 per cent pay rise, less than the 6 per cent union members wanted, but that this was ‘in line with most EBA [enterprise bargaining agreement] increases occurring in other locations’ (LHMU, undated, Important information for members of the LHMU employed by SecurityInc).
This bulletin also included a clause for paid maternity leave for casual employees, drafted by the union. This clause had not been discussed with the employer, however, the union provided draft clauses to the employer, who accepted the union’s revised response to the claim in total. Reportedly, SecurityInc did not question the clause regarding casual employees and so it was accepted (interview with union negotiator, 14 October 2008). The lead union negotiator included this clause in response to an LHMU official mentioning in the initial negotiations that casual employees should also be entitled to paid maternity leave.

In October 2008, six months after negotiations commenced, the union and the managers held joint meetings at the various worksites to explain the proposed agreement to staff. This also provided union members with an opportunity to question the employer. This was not an unusual practice, given that the employer and the union negotiators both desired that union members approve the agreement (interview with union negotiator, 14 October 2008). Members subsequently voted to approve the agreement in November 2008, with the union estimating that about 85 per cent voted in favour (LHMU, 9 November 2008, email to researcher). An agreement variation was approved by the Australian Industrial Relations Commission and a new agreement became operative in December 2008.

7.4 Outcomes of the negotiations
These negotiations were not for a full workplace agreement, but an extension of the existing agreement. As such, the parties did not bargain for a complete range of workplace conditions and entitlements. A comparison of the managers’ claim and the final outcomes is shown in Table 7.2.
Table 7.2: Comparison of SecurityInc Claim with Negotiated Outcomes

<table>
<thead>
<tr>
<th>Employer Claim</th>
<th>Outcome</th>
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<tr>
<td>12 month agreement, to end on 1 September 2009</td>
<td>Agreement to end on 1 September 2009, with negotiations for a new agreement to commence no later than 1 June 2009</td>
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<tr>
<td>3.5 per cent pay rise, plus 0.5% paid as an employer superannuation contribution</td>
<td>4.5% pay rise</td>
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<tr>
<td>4 weeks paid maternity leave</td>
<td>6 weeks paid maternity leave, also for casual employees with 12 months continuous service</td>
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The union agreed to a twelve month interim agreement (as per the employer’s original proposal), ending on 1 September 2008. The managers agreed to the union request that negotiations for a new collective agreement commence within eight weeks of the commencement of the new contract and no later than 1 June 2009 (letter from union to SecurityInc, 18 August 2008). The final agreement included a 4.5 per cent increase to wages and allowances (LHMU, October 2008, Important Information for Members of the LHMU Employed by SecurityInc).

SecurityInc agreed to introduce six weeks paid maternity leave, including for casual employees. There were two main elements to the clause – the definition of a ‘regular casual employee’, and calculating a casual employee’s average wage, for payment over the six weeks. The clause states:

‘…(o)n commencement of maternity leave after the birth of a child, the employee who has been employed by SecurityInc for 12 or more months of continuous service (including a regular casual employee) shall be entitled to 6 weeks paid maternity leave at the aggregate pay (as per cl. 17.5 of the Agreement) or average rate of pay over the preceding 3 months in the case of regular casual employee. A regular casual employee is a casual employee who has worked an average minimum of 1 shift per week for the preceding 3 months before the birth of the child’ (AIRC Order, 19 December 2008).

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3 SecurityInc’s Offer for Detention Services Industrial Agreement with LHMU, 21 July 2008
4 SecurityInc/LHMU Immigration Detention Centres Certified Agreement 2008
5 Important information for members of the LHMU employed by SecurityInc, undated
6 Important information for members of the LHMU employed by SecurityInc, undated
This entitlement is relatively generous. While casual employees were required to fulfil the 12 months qualifying period, just as permanent employees did, having to work only one shift meant that the clause could potentially apply to a large proportion of casual employees. This could result in increased costs to the employer, as SecurityInc did employ casual employees, although not a large number (interview with union negotiator, 14 October 2008).

The introduction of paid maternity leave represented a significant gain for the employees, with the lead union negotiator stating that ‘we made inroads on maternity leave, which is important, and we [didn’t have] to give anything away’ (interview with union negotiator, 24 September 2008). Both parties were able to claim credit for the introduction of paid maternity leave – the provision was initially introduced into the negotiations by the management team, and the union negotiators increased and improved the managers’ offer.

7.5 Identifying equality bargaining and facilitative and inhibitive factors

As with the other case studies, this research aims to identify whether a form of equality bargaining occurred in these negotiations. The employer’s claim included paid maternity leave and the parties negotiated this claim. Additionally, the bargaining agenda only included a very few items, and the introduction of paid maternity leave was seen as a ‘critical’ item by the managers and included for negotiation. The claim was then increased by the union negotiators through bargaining, in quantum and coverage. Therefore, a form of equality bargaining did occur, consistent with Heery’s definition of ‘bending the bargaining agenda to serve the needs of women’ (2006b, 522). Nevertheless, the fact remains that paid maternity leave was the only equality item negotiated, and one which conformed to traditional gender equality issues, rather than being more progressive to achieve substantive gender equality. Therefore it can be seen that a narrow form of equality bargaining occurred, and one which was symbolic of both the main union negotiators’ and managers’ commitment to achieving gender equality through collective bargaining, but not to achieving more fundamental changes.

The following section identifies the national factors which facilitated paid maternity leave being successfully negotiated, as well as the internal, organisational factors.
Significantly, this case study also clearly highlights factors which inhibited bargaining for paid maternity leave. These factors are grouped into the national, industry, and organisational regulatory levels, however, the distinctions between the three are not neatly delineated. Most of the factors come within the organisational level, but are influenced by the other two, higher levels.

7.5.1 National factors

Two national level factors impacted on bargaining for paid maternity leave in these negotiations. The first main factor was the contract process being undertaken by the Department of Immigration and Multi-Cultural Affairs. Government-level contract negotiations directly impacted on bargaining at the enterprise level, determining the form and content of the negotiations and indirectly impacting on bargaining for paid maternity leave. The deliberations undertaken by the department resulted in an interim agreement being negotiated, which in turn, meant that a truncated log of claims was negotiated by the parties. This, combined with the leadership of the SecurityInc managers, resulted in paid maternity leave being one of a few items on their bargaining claim and subsequently negotiated.

The second national level factor impacting on the negotiations was the Productivity Commission inquiry into paid maternity leave and the associated union and community campaign. The social activism around this issue indirectly impacted on the negotiations, as the managers introduced the claim because it was ‘the right thing to do’ at that particular time – paid maternity leave had become a community standard, it was influencing the bargaining environment, and managers therefore included it in their claim.

7.5.2 Industry and organisational factors

The factors at both industry and organisational levels which lead to, or inhibited bargaining for paid parental leave are somewhat intertwined in this case study. While benchmarking was a reason given by the managers for including paid parental leave in their claim, it was also inextricably bound up with wanting to be a good employer, and the managers demonstrating good HR management. So while it was an industry factor, it also emanated from the leadership values of the management team.
i) Types of leadership

While research (Dickens, 2000b, 204) showed that union leadership can contribute to a form of equality bargaining being successfully undertaken, this case study identifies two different forms of leadership. The first was from the managers, who instigated the paid maternity leave proposal and effectively acted as a catalyst for a form of equality bargaining to occur. The second emanated from the lead union negotiator, who supported the introduction of paid maternity leave generally for employees, and specifically in these negotiations, persuading the delegates to accept the employer’s paid maternity leave proposal.

a) Organisational leadership

The first form of leadership demonstrated in this case study was from the managers, who submitted a log of claims which included paid maternity leave. This case study is significant as it is the only one where the employer introduced an equality item; as mentioned, it is was one of only a very few items. The employer introduced paid maternity leave for two main reasons. Firstly, for business case reasons – to be seen as a good corporate citizen and employer, which Dickens (1998) has identified as an external factor for equality bargaining. The managers also introduced these provisions for altruistic reasons, because it was ‘the right thing to do’.

The second reason for the employer including paid maternity leave in their claim resulted from discussions held within the industry – the SecurityInc managers had worked in organisations which had provided paid maternity leave to their employees, and they considered that their current organisation should also provide this entitlement. While unions can contribute to provisions becoming a community standard through collective bargaining, this case shows that managers also have a very important role in extending standards across industries and workplaces, and can do so through bargaining as well as HR policy.

b) Union leadership

Leadership from the lead union negotiator was also displayed, which resulted in paid maternity leave being included in the final negotiated agreement. The union was committed to the introduction of paid maternity leave and supported the Unions NSW campaign for six month’s paid leave. However, such a large amount may not have
been realistic for these negotiations, in a workplace which did not have any paid parental or maternity leave, and for an agreement which was only an interim agreement. The wider community campaign made paid maternity leave visible, even though not all delegates supported its introduction.

Supporting the introduction of paid maternity leave was seen to be beneficial for the broader labour movement’s campaign as well as for the community, and as the lead union negotiator noted, particularly for future generations of employees. This union negotiator was integral in developing and maintaining unity for the negotiation of paid maternity leave in this case study. Without a strong and experienced union official to lead these negotiations and ensure the progression of the paid maternity leave claim, it is possible that this item would not have been included in the final workplace agreement, due to opposition from the delegates. This reinforces research which found that equality items are more likely to be successfully negotiated when an experienced union negotiator is involved, regardless of their sex (Heery 2006b).

Paradoxically, the opposition from delegates was forceful at the initial negotiations. The lead union negotiator did not persuade the delegates of the need for paid maternity leave, rather, he approached it by assuming that paid maternity leave would be included in the agreement – it was not viewed as an optional bargaining item. The negotiator adopted the position that paid maternity leave was a given and that the union supported this, albeit at a higher level than was initially offered by the managers. Ultimately, this opposition did not impact on the negotiations but it does highlight that opposition from union members can be an inhibitive factor, and this is further discussed below.

The opposition from the delegates also linked to another inhibitive factor identified in this case study – a lack of education about bargaining for equality items. As mentioned earlier in this chapter, the lead union negotiator recognised that the union needed to educate the union negotiators about the nature of bargaining; a manager concurred with this, framing it in terms of engaging in meaningful negotiations, rather than posturing. The union also needed to educate about the importance of bargaining for equality items, as the union negotiators and many of the union members did not
understand the importance of paid maternity leave for current or prospective employees.

ii) A convergence of interests
The leadership on paid maternity leave demonstrated by the lead union negotiator and the managers also demonstrates a convergence of interests between the bargaining parties, reinforcing other research findings (Alemany, 1997). Paid maternity leave was introduced because the employer was motivated by altruistic and business reasons. The union supported the introduction of paid maternity leave as it would benefit current and future generations of workers, as well as support the wider labour movement campaign. This convergence of interests facilitated bargaining for an equality item and overcame the resistance from delegates, which was a form of majoritarianism which hindered the paid maternity leave negotiations.

This case study also raises another point about the nature of equality bargaining – does equality bargaining only occur when instigated by union negotiators? Chapter Two reviewed the research on equality bargaining and showed that it is unions which have instigated equality bargaining. Managers more usually pursue equality initiatives through HR policies, as research has shown (Charlesworth et al, 2005). The research shows that managers can participate in equality bargaining by engaging in a high trust relationship with the union (Dickens, 1998) and also when their interests coincide with the union’s (Colling, 1997). This case also showed that managers can participate in a form of equality bargaining when they instigate the negotiations and include an equality item in the bargaining agenda.

iii) Bargaining relationship
The relationship between the bargaining parties was respectful and based on a high level of trust. As noted in earlier in the chapter, the lead union negotiator referred to SecurityInc’s Managing Director as being ‘straight up’, and the Managing Director also displayed trust by providing the union negotiators with confidential information. The managers demonstrated the corporate aims of the company, which included principles of valuing employees and stakeholders. This positive relationship indirectly fed into bargaining for the paid maternity leave provisions. The organisation also
wanted to be seen to be a good employer by the union, and the paid parental leave provisions could contribute to this.

iv) Majoritarianism

Related to union leadership is the lead union negotiator overcoming ‘majoritarianism’, which was displayed in this case, but did not prevail. ‘Majoritarianism’ is where equality bargaining items which will benefit a minority of employees are sacrificed for items which will benefit the majority (Blackett and Shepherd, 2003). Here delegates were prepared to forego paid maternity leave – which would benefit a segment of the workforce – for the introduction of stress leave, which could potentially benefit the whole workforce. This was not successful, due to union leadership as well as opposition from the employer. In the literature, majoritarianism occurs in male-dominated workplaces, where equality items which would benefit women are not pursued, in favour of more traditional bargaining items (Blackett and Sheppard, 2006). Different priorities can also arise between different groups of women (Dickens, 2000b, 201).

Majoritarianism in this case study combined with the delegates’ lack of understanding about bargaining to inhibit bargaining for paid maternity leave. As Gerstel and Clawson (2005, 289; 293) found, the union delegates saw the employers’ role mainly as providing a wage increase, and very much believed that caring arrangements were the responsibility of an individual employee, not the employers’, and not something to be gained through bargaining. The lead union negotiator did explain the nature of bargaining to the delegates, that they could negotiate for multiple items, but also conceded that the union could have undertaken more education in this area.

7.6 Conclusion

This case study profiled negotiations between SecurityInc and the Liquor, Hospitality and Miscellaneous Union. The chapter commenced with an overview of the business environment, which was important as it impacted on the content and subsequent processes of negotiations. The parties were not negotiating for a full agreement, but were only negotiating a small number of items for inclusion in the agreement which the employer proposed to extend. This chapter then profiled the workplace and the union, existing family provisions were detailed, and the negotiations described.
This case study found that equality bargaining did occur, but in a narrow form. Two important factors which may lead to the successful bargaining for an equality item arise from this case. Firstly, an employer can initiate a claim and facilitate the successful introduction of paid maternity leave into a collective agreement. This shows that employers, as well as unions, can also use collective bargaining to progress equal opportunity. Secondly, different levels and types of leadership from both the employer and union can result in successful bargaining for paid maternity leave. This finding uncovers the layers of agreement needed to successfully bargain for equality items, between union leaders, delegates and members; and between the bargaining parties.

Another major contribution of the chapter is the identification of inhibitive factors. Significantly, the strategy of delegate posturing has not been identified in the literature as impacting negatively on equality bargaining. Union leadership is discussed in the literature but the role of delegates and their behaviours and strategies has been under-examined and under-theorised. The actions of delegates in inhibiting equality bargaining – and especially disagreeing with the position of a paid union official who was committed to negotiating and equality item – has not been previously discussed. This is an important factor as it shows the internal dynamics within the union as well as reveals the range of behaviours displayed by delegates. The other inhibitive factor, majoritarianism, has been discussed by equality bargaining researchers, however, less focus has been given to how union delegates can contribute to this phenomenon taking place, particularly through the opposition by female delegates. This case study clearly demonstrates majoritarianism, and how strong union leadership can overcome items of benefit to women being traded off for items which may benefit all employees.
FIGURE 7.2
Factors Impacting on Equality Bargaining: LHMU and Security Inc.

Facilitative Factors

Business environment
(contract negotiations)

Public policy (Productivity Commission inquiry)

EMPLOYER
- flow on from other workplaces; previous workplace experiences
- community standard

UNION
- paid maternity leave a required bargaining item

BARGAINING

EMPLOYER
- employer-initiated claim which included PML
- leadership included community standard; business case; good corporate citizen

UNION
- union leadership

- convergence of interests
- good relationship
- overcoming union members’ resistance
- experienced negotiator
- benefit future generations

OUTCOMES
Introduction of paid maternity leave

Inhibitive Factors

- delegates’ attitudes and posturing
- majoritarianism
- lack of educating union members about bargaining and family provisions

External - national level

External - industry level

Internal - union/organisational level