Chapter Eight

The Shop, Distributive and Allied Employees’ Association, and RetailCo:
Bargaining for equality in an economic downturn

‘...if we were...to get an expensive maternity leave benefit up, which only benefits a small proportion of the employees, that’s going to come off the wage increase, which everybody gets.’

(Interview with union Secretary, 13 February 2009).

8.1 Introduction
In November 2008, the Shop, Distributive and Allied Employees’ Association (SDA) presented a claim to initiate negotiations with a large, major, retail chain store (known here as RetailCo). The negotiations were for a new collective agreement, to replace the existing agreement which was due to expire in April 2009. The ensuing negotiations were complex, conducted in an economic downturn, and had both parties including a multitude of items in their claims. The union’s claim included paid parental leave, which was negotiated, but ultimately not included in the final collective agreement. The union negotiators rather effortlessly removed paid parental/maternity leave from the claim, and this chapter tells the story of how this provision came to be sacrificed to enable employees to secure increased wages.

This chapter commences with an overview of the business environment surrounding the negotiations before profiling the bargaining parties. The family provisions and the existing industrial agreements are then discussed and this is followed by detailing the negotiations. Consideration is then given to whether or not equality bargaining occurred in these negotiations, and if it did, the facilitative or inhibitive factors are identified.

8.2 Overview of the retail sector workforce
Working conditions in the retail sector have changed since the 1980s, due to the deregulation of retail trading hours. This has resulted in longer trading hours, and by the mid-1990s, seven day trading was widespread (Strazdins, 2006, 385; 392). Accordingly, employers sought to engage a highly flexible labour force for these
additional hours. The use of flexible hours however, was found to be at the employers’ – not the employee’s – discretion and may have deterred mothers from working in this industry. Strazdins et al examined mothers’ labour force participation in the Australian retail industry from 1981 to 2001, and concluded that the increased labour market flexibility arising from the deregulation of hours correlated with the decreased workforce participation of mothers (2006, 393). These researchers concluded that the increased span of hours and non-standard hours acted as a disincentive to mothers’ employment (2006, 395).

The industry still, however, employed large numbers of women, and in 2008, had the second highest proportion of female employees (after ‘health and community services’), with 58 per cent of the workforce being female (Pech et al, 2009, 19). The retail sector also employed the highest proportions of young workers. In 2008, over a third of all employees in the sector were aged between 15 to 24, compared with about one in every six employees in the workforce as a whole (Pech et al, 2009, 10). At the time of the negotiations, the retail industry employed a high proportion of low-skilled workers – employment which is suitable for students. In May 2008, 60 per cent of retail trade employees did not have a non-school qualification, compared with 40 per cent for the general workforce (Pech et al, 2009, 19). The low skilled employment is reflected in the level of wages, and in 2008 the retail industry was the second lowest paying industry, above the ‘accommodation and food services’ industry (ABS, 2008, 18).

In research examining the quality of working life of young employees in the retail sector, researchers heard that retailing was seen as ‘a job you do if you can’t do anything else’ (Roan and Diamond, 2003, 103). The retail trainees in Roan and Diamond’s case study research reinforced the perception of the retail industry not being a desirable industry in which to work, as this was not the trainees’ first career choice. This research also found that while there were career paths in the retail industry, leading to management level positions, these were not favoured by the young trainees due to the long and unsociable hours required (Roan and Diamond, 2003, 111).

The retail industry offers a great deal of part-time work, however, which is suitable both for students and parents. 2008 figures reveal that 35.8 per cent of the total number of employees in retail trade were employed casually and almost half the total
workforce were part-time (ABS, 2008, 25; 46). A third of employees in the sector were women working part-time (ABS, 2008, 46). In 2008, the majority of retail employees were located within large retail businesses. Large retail employers with over a hundred employees accounted for only 0.4 per cent of all retail businesses but employed 63 per cent of people in the industry (Equal Opportunity for Women in the Workplace Agency, [EOWA], 2009, 4). In this sub-sector, women made up just under half of full-time employees, almost three-quarters of part-time employees, and 60 per cent of casual employees (EOWA, 2009, 7). The picture which emerges then, is of an industry populated by relatively low paid, female employees, the majority of whom were casual and part-time, working for large retail organisations.

At the time of negotiations, the retail industry was experiencing a downturn due to the Global Financial Crisis (GFC), a term given to a global economic downturn which followed ‘a near-collapse in the global financial system’ in September 2008 (Gruen, 2009). High fuel prices and interest rates and decreased business confidence were exacerbated by the GFC, resulting in a decline in retail sales (Rintoul et al, 2008). Sales fell from an increase in 2007 of 8.3 per cent, to a decline of 0.3 per cent for the first half of 2008 (Shaw, 2008). This resulted in the loss of almost 8,000 full-time jobs in the retail sector in the 12 months to August 2008 (Rintoul et al, 2008) and the retail sector was expected to remain subdued for some months when negotiations commenced (Shaw, 2008). The negative economic conditions, combined with a low-skilled workforce which was unlikely to possess bargaining power, suggests that negotiating for increased wages and improved conditions in this sector may have been difficult. This was indeed the situation in these negotiations, with paid parental/maternity leave being a casualty of the difficult economic times.

8.2.1 Family provisions in the retail sector
Researchers have expected that because the retail sector is female dominated, the sector would contain ‘innovative and targeted’ working conditions (Burgess et al, 2005, 4). Instead, they have found that the sector lags behind others in providing family friendly working arrangements (Burgess et al, 2005). Generally, the availability of family provisions in the retail sector through either workplace agreements or human resource policies has been found to be low.
To illustrate this, as at August 2008, 23.6 per cent of retail trade employees had access to paid maternity leave. This compared with 70.5 per cent for employees in ‘public administration’, the industry with the highest amount of this leave, and 12.5 per cent for the ‘accommodation and food services industry’, the industry with the lowest amount (ABS, 2009, 49). The most recent comprehensive data on the incidence of family provisions in collective agreements shows that for the retail sector, only three per cent of collective agreements contained paid maternity leave and four per cent included provisions for extended unpaid parental leave (DEWR, 2007, 121-22). More recent data found that 10 per cent of workplace agreements in the retail sector included a family provision (which was defined to include the provision of child care, flexible working hours and part-time work for new parents: Evesson et al, 2007, 23).

In regards to paid maternity leave, the difference between industry incidence and incidence in agreements, suggests that this entitlement is included in human resource policies, rather than through enterprise agreements. Family provisions may also be provided informally.

The size of the organisation did not appear to make a difference to the availability of paid maternity/parental leave. Research based on 2006 survey data found that only 20 per cent of small and medium retailers and only 15 per cent of large retailers provided paid parental leave (Office for Women, 2007, 35; EOWA, 2009, 14). Other research on organisations which were required to report in 2007-2008 on equal opportunity initiatives to comply with federal equality legislation, showed that since 2005, the incidence of paid maternity leave had increased for sectors with large enterprises, however, this had not occurred in retail (EOWA, 2009, 15).

The other main family provision of interest in this case study is carer’s leave, which is more widely available than paid maternity/parental leave, since it was a test case provision established in 1994 (as discussed in Chapter Four). From 2004 to 2006, the latest available data, 85 per cent of all workplace agreements included carer’s leave (DEWR, 2007, 121-22). Survey data showed that in the retail industry, 56 per cent of small retailers and 96 per cent of large retailers provided carer’s leave through any industrial instrument (Office for Women, 2007, 40; EOWA, 2009, 15). Formal carer’s leave is likely to be more available in large organisations than in smaller businesses as
larger organisations tend to have human resource personnel who may be more aware of minimum standards than small business operators.

Burgess et al (2005) compared retail industry workplace agreements with human resource equal employment opportunity (EEO) policies and programs. The researchers were looking for EEO policies on flexible working arrangements, policies and programs which supported caring responsibilities and also ‘recognise(d) that child bearing and rearing can disrupt careers’ (Burgess et al, 2005, 12). They found that there was little interaction between any EEO provisions and programs employers may have had in place and agreement making (2005, 18). EEO provisions tended to be contained in human resources policy, not in agreements, and the researchers concluded that ‘agreements and union consultation are not perceived as either effective or appropriate mechanisms for achieving these [EEO] objectives’, (Burgess et al, 2005, 18; 12). Burgess et al also suggested that this indicated that the union, the SDA, was not successfully pursuing EEO issues in agreements, concluding that ‘(i)f workplace bargaining and EEO are the means of achieving gender equity goals the evidence here is patchy and not encouraging’ (Burgess et al, 2005, 22).

Mortimer and O’Neill subsequently examined the incidence of various retail sector industrial instruments. After comparing twenty collective agreements in the retail sector with the underlying State award, they found that the agreements built on award provisions, particularly by providing additional carer’s leave (2007, 81). They also found, however, that there was little evidence of any innovative family provisions designed to meet the needs of employees (Mortimer and O’Neill, 2007, 81). Overall then, the existing research suggests that bargaining for EEO and equality provisions had occurred only to a limited extent in the retail sector.

More recently there are signs that the situation is changing, with the SDA bargaining for additional unpaid parental leave. This was evidenced by many employees in the sector having access to two years’ unpaid parental leave at the time of the negotiations, a provision the union believed was becoming an industry benchmark:

‘...(t)he standard for parental leave is up to twelve months off, but most of our agreements provide up to two years. We’ve progressed from twelve months to twenty-four months, basically by starting to negotiate and the breakthroughs came with the Coles companies, and
once one particular division had agreed to fifteen months or eighteen months, we’d use that as the argument to extend it to the next branch, and so on and so on (interview with union Secretary, 8 September 2008).

The union also recognised the need to bargain for paid maternity leave. In fact, large retailers were increasingly introducing paid maternity/parental leave through HR policy, in the years prior to the case study negotiations. In early 2006, Mortimer and O’Neill found that only one major retailer out of twenty provided paid maternity leave (2007, 75). This situation changed considerably in the following two years. In March 2008, Myer introduced six weeks paid maternity leave (Myer, 2008). Later in the same month, Aldi’s, a large grocery retailer, introduced fourteen weeks maternity leave on half pay (Workplace Express, 28 March 2008b). This was followed by Woolworths’ offering eight weeks’ paid maternity leave which would set a new benchmark, according to the union Secretary (Schneiders, 2008). The retailers cited a variety of reasons for introducing paid maternity leave, including to retain staff, to create ‘a loyal and happy workforce’, and because it was ‘the right thing to do’ (Myer, 2008; Aldi, 2009; Luscombe quoted in ABC, 2008b).

However, in a sector with a high proportion of casual employees, many of these would not meet the eligibility criteria to receive paid maternity leave (Baird quoted in Gough, Sun Herald, 2008). The Myers’ scheme would exclude about 8,000 casual employees, and 60,000 would be excluded under the Woolworths’ scheme (Gough, 2008). For this reason, the SDA had advocated that casual employees be included in any government funded paid maternity leave scheme (SDA, 2008a, 9).

To summarise, at the time of the RetailCo negotiations, the economic situation may have mitigated against bargaining for paid maternity leave or increased family provisions. However, retail employers were starting to realise the value of paid parental/maternity leave and an increasing number were offering this provision. Paid maternity leave was also becoming an industrial standard in the sector, with several large retailers establishing a benchmark. Carer’s leave was also widely available, and was almost a universal entitlement in large retail companies.
8.3 Background to the negotiations

This section commences with an overview of the bargaining parties, and briefly discusses the relationship between the two based on information from the union Secretary. The section examines union policies and activities on family provisions and then details entitlements which were available to RetailCo employees at the time of the negotiations.

8.3.1 RetailCo

RetailCo is a discount department chain store which sells toys, leisure goods, entertainment goods, clothing, consumable and home products. At the time of the negotiations it had over 180 stores in Australia and employed over 26,000 people (RetailCo, 2009, RetailCo Parent Company Annual Report, 32). RetailCo was bought by a new company in 2007, and required ‘a significant structural change to effect a sustained turnaround in…performance’ (RetailCo, 2009, RetailCo Parent Company Annual Report, 8). A new Managing Director appointed in October 2008 reviewed RetailCo and then developed and commenced implementing strategies to ‘turn around’ the business (RetailCo, 2009, RetailCo Parent Company Annual Report, 34).

As with other retailers, RetailCo was affected by the GFC. In the quarter to July 2008, company sales decreased due to decreased discretionary spending by consumers (Evans, 2008; Bell, 2008). The Australian government implemented a $10.4 billion economic stimulus package in late 2008 to encourage spending (Rudd and Swan, 2009) which would also assist in maintaining retail employment. However, analysts stated that this would not change underlying consumer behaviour in the long term and any increase in sales was likely to be temporary (Carson and Saulwick, 2008).

In this environment, with retail employment declining nationally, the Managing Director of RetailCo stated that the organisation would seek to retain employees. It was reported that the union movement viewed this as a move to average the hours of full-time employees over a year, requiring employees to work longer during peak times and reduce hours during quieter periods (Rochfort, 2009). While this was not a specific claim in the RetailCo negotiations, the management representatives did seek additional flexibilities to be incorporated into the agreement, which would enable the
company to increase staffing during the busiest times and decrease the number of staff in slower periods.

The RetailCo bargaining team consisted of four managers, with one main (female) spokesperson, who was one of RetailCo’s employment relations managers. The other three managers included a senior operations manager and two other employee relations’ managers (interview with union Secretary, 20 March 2009). Some of the management team were new to the organisation, as well as being new to the retail industry (interview with union Secretary, 2 December 2008). None of these company negotiators therefore, had been involved in the previous negotiations (interview with union Secretary, 13 February, 2009).

8.3.2 The Shop, Distributive and Allied Employees’ Association

The employees of RetailCo were represented by the SDA, the largest union in Australia, which had 217,000 members in 2008 (SDA, 2008b, 1). While the union was the largest, the industry density was not high, with just over 15 per cent of retail trade employees being members at this time (ABS, 2009, 35). Members were predominantly young, aged under 25, and female (SDA, 2008b, 1). The membership of the union was concentrated in the larger retail organisations, with many of the smaller stores having few members. The union density was estimated to be between 65 to 70 per cent in RetailCo (interview with union official, 15 April, 2010).

The union stated that it was ‘the largest women’s organisation in Australia’ and it was the first union to ‘establish a Women’s Bureau, appoint a full-time Women’s Coordinator, develop and implement an equal employment opportunity program…and formulate a comprehensive Women’s Policy’ (SDA, undated(a), Women’s Policy). However, details of the EEO program, the women’s policy or the history of the union’s achievements for female members were not publicly available. The union was, however, a party to the Family Provisions test case (discussed in Chapter Four), as well as all the other work and family test cases, excluding the 1979 maternity leave test case.

The union also supported the ACTU campaign for paid maternity leave, however, differed from the ACTU position by advocating paid maternity leave for all mothers,
including ‘stay-at-home’ mothers (SDA, 2008b). The SDA also made a submission to
the Productivity Commission inquiry and participated in the associated hearing (SDA,
2008b, Productivity Commission, 2008e). The union had also distributed a pamphlet
prior to the negotiations (SDA, 2008b, undated(c)), outlining what the union
considered should be included in a national paid parental leave scheme, and believed
that this also contributed to educating members about the need for paid maternity
leave (interview with union Secretary, 8 September 2008).

As well as having infrastructure for women’s policy, the union was comprised of two
main organisational structures, which were national and state based. The union was a
federation, with a national office and at least one branch in each state (SDA,
undated(b)). The union’s supreme governing body was the National Council, which
met once a year to determine policy. The National Council consisted of forty-three
members and included the National President, the Vice-President, the Secretary, the
Assistant Secretary and elected representatives from each of the branches. About half
of the National Council were union delegates, the rest were paid union officials. The
National President, Vice-President, National Secretary and Assistant Secretary and
five other members then formed the National Executive, which met every four months
to oversee the daily operation of the union (interview with union Secretary 23 April
2008). All of the branches were represented on the National Executive.

The National Council was the main governing body and there were also state
branches, which were governed by a Branch Council elected by union members.
Approximately 75 per cent of the branch council were union delegates. The National
Executive and the Branch Council dealt with different issues, with the National
Executive performing an overarching co-ordinating role. The Branch Council focused
on local issues, such as recruitment and services provided to members and training
(interview with union Secretary, 23 April 2009). The structure of the union is depicted
below, as are the processes of claim development.
Major negotiations, including for RetailCo, were directed by the Secretary of the SDA. Union members did not participate in formal negotiations, with participation limited to having input as the claim was developed, then assisting as the claim was explained to members.

The union Secretary, who had held this position since 1978 (SDA, 1 July 2010, email from union official to researcher), was extremely experienced and had negotiated with RetailCo previously. The Secretary led the negotiating team, which also included the Assistant National Secretary, an industrial officer and a representative from each of the State branches, nominally the Branch Secretary. Ultimately, the power behind the union negotiations was the Secretary, who did most of the talking and made the decisions. Out of the seven branch secretaries who participated in the negotiations, five were male and two were female. All except one had commenced working with the union as a paid union official; one of the female branch secretaries had come up through the ranks from being a shop assistant (interview with union Secretary, 4 May 2009). As will be shown, however, the sex and experience of the negotiators did not impact on the negotiations, as they were directed by the Secretary, in consultation with branch secretaries.
The Secretary had negotiated with RetailCo previously, and stated that the relationship between the parties both during and outside of negotiations was professional and cordial. The Secretary described the union’s approach to working with employers:

‘…(o)ur success as a union is really built around trying to have a constructive relationship with companies, so that they will open up to you, tell you what’s really going on, and when it comes to dealing with claims, they will hopefully have some sympathy for claims that you’re putting up, rather than what is typically the American union model where it’s just a great big fight. In that environment, I don’t think that we would get very far at all, we just wouldn’t. And unless you’ve got industrial muscle to back you up, I think that conflict model is just not appropriate for the industry that we’re in. It wouldn’t work’ (interview with union Secretary, 8 September 2008).

The union Secretary stated that the previous negotiations were cordial, and there was no history of industrial action:

‘…(i)f we tried to take industrial action, many people wouldn’t participate…this is not an industry where you can readily marshal people to take industrial action…because they’re young and casual, not switched on...RetailCo would employ roughly 25,000 people – getting those people to a fever pitch to take industrial action in an effective way would be extremely difficult and time consuming (interview with union Secretary, 8 September 2008).

The bargaining parties had a long and cordial relationship and had previously engaged in efficient, pragmatic bargaining¹, which was not reliant on industrial action being taken by RetailCo members.

8.3.3 Existing family provisions
RetailCo employees were covered by an enterprise award which contained all the work and family test case provisions. The collective agreement built on this, by including the provisions which had been contained in the unions’ claim in the Family Provisions test case (rather than the decision). Employees with twelve months continuous service, including regular casual employees, were entitled to up to two years unpaid parental leave, with eight weeks able to be taken simultaneously by both parents (cl. 25. RetailCo Agreement 2006). While the two years unpaid parental leave was a test case standard, the SDA had successfully been negotiating this prior to the test case decision (interview with union Secretary, 8 September 2008). The agreement

¹ For a definition of ‘pragmatic’ bargaining, see Chapter Six.
also provided employees with two days’ unpaid carer’s leave which could be used by all employees, including casual employees (cl. 20.2, RetailCo Agreement 2006).

Other entitlements were also included which did not originate from a test case. The agreement provided employees with ten days carer’s leave as per the Family Provisions test case, but also provided an additional day carers’ leave once the initial allocation had been used (cl. 20.1.2, RetailCo Agreement 2006). The agreement provided that sick or carer’s leave could be used as pre-natal leave, and further, that employees could use up to three days carer’s leave to attend medical appointments with their pregnant partner (cl. 21.3, RetailCo Agreement 2006).

The agreement included flexibilities for employees, enabling staff to work casually while on parental leave if they so chose, however, this employment did not count towards service for any purposes except for the accrual of long service leave, nor did it break their period of parental leave. Undertaking work during parental leave also did not extend the period of leave (cl. 25.13, RetailCo Agreement 2006). This provision is innovative, providing low paid employees with an opportunity to earn some income while on a potentially lengthy period of leave. The workplace agreement also required managers consider an employee’s family responsibilities ‘as far as practicable’ when setting rosters (cl. 25.13; 25.15; cl. 13.8.4, RetailCo Agreement 2006). These clauses suggest that the SDA had sought and won conditions which reflected the needs of their largely female workforce. These provisions also appear to be somewhat contrary to the findings of Mortimer and O’Neill (2007), who suggested that the SDA only minimally built on award entitlements.

8.3.4 Preparing for negotiations
This section details the process of claim development by the SDA, a long process which involved union members and officials at all levels. It also details some of the major items included in the final claim. This section also lists the items in the employer’s claim, however these are fully explained as the negotiations are detailed later in this chapter.
i) Claim development and final content

The development of the claim commenced in August 2008, with staff of the National Office of the union developing a draft, as depicted in Figure 8.1. The SDA did not have a ‘core’ or industry claim, but there were four items which were included in all claims. These were wages, rostering, supported wages (for people with an intellectual disability) and paid maternity leave. The Secretary explained the importance of these items:

‘...wages is always the number one issue. Paid maternity leave is obviously a continuing claim going forward, although it has to be subject to whatever the government is going to do in the Budget... Rostering is always an issue, there are always issues with companies, they’re not always the same. Supported wages is a claim that never requires any discussion as it’s always accepted by companies’ (interview with union Secretary, 4 May 2009).

Even at this early stage of negotiations, while the claim was being developed, the impact of the Productivity Commission inquiry into paid parental leave was mooted as having a possible impact on the negotiations, showing the extensive influence of the inquiry.

Once the draft was developed, the branches organised meetings with delegates and prioritised the issues. The Branch Secretaries then culled the list of bargaining items to a ‘manageable’ level and this was then consolidated by the union’s national office, which reduced about eighty items to twenty (interview with union Secretary, 8 September 2008). Claims that were not considered achievable or could be dealt with through another process were removed from the log of claims (interview with union Secretary, 2 December 2008). The union Secretary summarised the process of claim development:

‘...we draft up something, it goes out to the branches, branches have input, delegates have input, it comes back. It’s all put together, those things which are inappropriate for a new log, but really are grievances about the existing agreement are all dealt with, separately at first, branch by branch, and then we review what’s come in and we might cut down the number of claims if there are a large number, we might be merging claims, rationalising claims et cetera, et cetera. So you finally get your log of claims and you’re ready to go’ (interview with union Secretary, 8 September 2008).
The union had a detailed log of claims, even though items were heavily culled from the original version. The main claims and those which could impact on work/family balance are contained in Table 8.1. This table also includes some of the main claims from the employer, to provide context and enable a comparison. The employer’s claims are discussed later in the chapter.

The union’s claim included the four main items, with a claim for a 5 per cent increase in wages and allowances for each year of the three year agreement and an increase to the minimum supported wage payment from $62.00 to $69.00 a week (SDA, (undated) RetailCo Negotiations 2008: SDA Log of Claims; cl. 7.6.2, RetailCo Ltd Agreement 2006). The claim also included increased loading for casual employees from 20 to 25 per cent. The rostering claim was for a tea break to be provided when an employee worked four hours or more, as the existing agreement did not provide this for all employees, only those in four states (SDA, (undated) RetailCo Negotiations 2008: SDA Log of Claims; cl. 15.3, RetailCo Ltd Agreement 2006).

The claim also included the introduction of paid parental leave. The union was seeking ‘10 weeks Paid Parental Leave to be available to all persons qualified to receive unpaid parental leave’ (SDA, (undated) RetailCo Negotiations 2008: SDA Log of Claims). This wording would ensure that regular casual employees, as defined in the legislation, would also be entitled to the leave. The quantum of ten weeks was determined by the Secretary, who considered it to be a midpoint between the amount that retailers had introduced in the last year or so, which ranged from six to eight weeks, and that which was a community standard, of twelve weeks (interview with union Secretary, 4 May 2009).
Table 8.1: Comparison of Claims: SDA and RetailCo

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<thead>
<tr>
<th>SDA Claim&lt;sup&gt;2&lt;/sup&gt;</th>
<th>RetailCo Claim&lt;sup&gt;3&lt;/sup&gt;</th>
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<tr>
<td>5% increase in wages and allowances for each year of a 3 year agreement.</td>
<td>1.5% increase in wages and allowances for each year of a 3 year agreement.</td>
</tr>
<tr>
<td>First tea break of 10 minutes for more than 4 hours work for all employees.</td>
<td>First tea break of 10 minutes after 4 hours work for all employees.</td>
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<tr>
<td>10 weeks paid parental leave to all those qualified to receive unpaid parental leave.</td>
<td>No claim</td>
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<td>No claim</td>
<td>Extend key operational periods from October to February, Monday before half yearly stock take in June to last Sunday in July.</td>
</tr>
<tr>
<td>No claim</td>
<td>Part-time employees to work minimum of three hours per week.</td>
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<tr>
<td>Where an employee has 300 hours accumulated sick leave, they may access such leave when carer’s or compassionate leave has been exhausted.</td>
<td>No claim</td>
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<tr>
<td>Increased casual loading from 20% to 25%.</td>
<td>No claim</td>
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<tr>
<td>Increase supported minimum wage payment to $69 a week.</td>
<td>No claim</td>
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<tr>
<td>No claim</td>
<td>Annual leave cash out where more than 6 weeks for a full-time employee; pro-rataed for part-time employees. Employees to maintain 4 weeks annual leave.</td>
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The union’s claim also included an item to convert sick leave in excess of 300 hours to carer’s leave. The union Secretary explained the underlying reasoning for this claim:

‘…(t)hat started off as a claim for people getting their sick leave paid out. We know that that is going to be refused, so we thought ‘How can we be a bit creative about this?’ . There are many people who come to

<sup>2</sup> SDA, (undated), RetailCo Negotiations 2008: SDA Log of Claims

<sup>3</sup> RetailCo Log of Claims: SDA Negotiations 2009
work even if they’re not feeling 100 per cent because they don’t want to let others down...so they end up with large balances of unused sick leave...So we thought there is an argument that people should be able to use that in some way without doing away with their sick leave altogether, so we came up with the idea that they should be able to take the amounts in excess of 300 hours for family leave ...We thought this was a sensible way of trying to get a benefit for people who’ve enjoyed good health, who’ve always come to work and have a large balance without the company being up for a horrible cost’ (interview with union Secretary, 2 December 2008).

This would benefit those with family responsibilities who needed additional carer’s leave, an important provision in a female-dominated workforce.

In summary, the main claims included a five per cent wage increase per annum for three years, ten minute tea breaks to be provided after four hours for all staff, ten weeks paid parental leave, and a claim to convert excess sick leave into carer’s leave. The union claim also included a range of other claims, relating to changes to public holidays, when provision of a medical certificate for sick leave was necessary, extending compassionate leave to cover the death of a niece or nephew and items about uniforms and payslips. Not all of these claims are discussed in this chapter, which focuses on negotiating family provisions. The timing and development of the negotiations are outlined in Table 8.2 and are explained below.

8.4 The negotiations

Negotiations commenced in November 2008 (as shown in Table 8.2), when the union Secretary presented the union’s claim to the RetailCo managers, who then agreed to consider the claim (interview with union Secretary, 2 December 2008). The second negotiating meeting was not held until early February 2008, due to the management negotiators being new and needing more time to formulate their response to the union’s claim (interview with union Secretary, 13 February 2009). At the second meeting, the managers presented an overview on the finances and operating status of RetailCo, and reiterated media reports which stated that the organisation was not trading well compared to competitors. The presentation was conducted by senior managers, which the union Secretary interpreted as a sign of trust from the employer (interview with union Secretary, 13 February 2009).
Table 8.2: Timeline of RetailCo and Shop, Distributive and Allied Employees’ Association Negotiations

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<tbody>
<tr>
<td>Pre-negotiations</td>
<td>Negotiations</td>
<td></td>
<td></td>
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<tr>
<td>Union claim developed.</td>
<td>Employer visited branches and discussed grievances with employees.</td>
<td>Union claim finalised.</td>
<td>Union Secretary presented claim to employer.</td>
<td>No bargaining activity.</td>
</tr>
</tbody>
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Union claim included:
- 5% pay rise per annum for 3 years.
- Increase supported wage minimum payment to $694
- First tea break after 4 hours
- 10 weeks paid parental leave
- Entitlement to use excess personal leave as carer’s leave
- 25% loading for casual employees.

Legend

| Union collective activity |
| Negotiations |
| Agreement |

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4 Table compiled from interviews with union officials throughout negotiations and letter to union officials. See Appendix 3.2 for full details.
<table>
<thead>
<tr>
<th>February 2009</th>
<th>February 2009 (cont.)</th>
<th>March 2009</th>
<th>April 2009</th>
<th>May 2009</th>
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<tbody>
<tr>
<td><strong>Resolution</strong></td>
<td></td>
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</tr>
<tr>
<td>Employer presented counter claim to union, included:</td>
<td>Union agreed to:</td>
<td>Employer offered 6.25% wage rise over 3 years, dependent on union agreement to annual leave blackouts. Union refused.</td>
<td>Agreement on:</td>
<td></td>
</tr>
<tr>
<td>- 1.5% pay rise for 3 years</td>
<td>- employees voluntarily working additional hours during key operational periods; family responsibilities to be taken into account</td>
<td>- key operational periods extended</td>
<td>- 8.5% pay rise over 3 years</td>
<td></td>
</tr>
<tr>
<td>- changes to key operational periods</td>
<td>- extended key operational periods</td>
<td>- increased annual leave blackouts. Tasmanian employees with family responsibilities could be exempted (due to different timing of school holidays).</td>
<td>- supported wage increased to minimum of $69.</td>
<td></td>
</tr>
<tr>
<td>- minimum of 3 hours per week for part-time employees</td>
<td>- some additional annual leave black out periods.</td>
<td>- June 2009 – agreement approved by employees.</td>
<td>- first tea break after 4 hours</td>
<td></td>
</tr>
<tr>
<td>- first tea break after 4 hours</td>
<td>- cashing out annual leave, as long as employee still had 4 weeks</td>
<td></td>
<td>- annual leave to be taken in any manner, including in single days</td>
<td></td>
</tr>
<tr>
<td>- annual leave to be taken in any manner, including in single days</td>
<td>- excess personal leave could be used for sick leave.</td>
<td></td>
<td>- reduced period when penalty rates apply.</td>
<td></td>
</tr>
<tr>
<td>- reduced period when penalty rates apply.</td>
<td>Union withdrew:</td>
<td>Employer then offered 7% - union again refused.</td>
<td></td>
<td></td>
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<tr>
<td>Union rejected cost-cutting initiatives, such as reduced penalty rates.</td>
<td>- casual loading claim</td>
<td></td>
<td></td>
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<tr>
<td>Employer rejected union claims, including for paid parental leave.</td>
<td>paid maternity leave claim.</td>
<td></td>
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</tr>
<tr>
<td>(Later February)</td>
<td>Employer agreed to:</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>- tea breaks claim</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>- excess sick leave used as an additional 6 days’ carer’s leave per year</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>- increased minimum supported wage.</td>
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Agreement on cashing out annual leave. Also agreement on less significant issues, such as compassionate leave for death of a niece or nephew, timing on availability of pay slips. Organisers met with delegates to take proposed agreement to members for approval.
The management negotiators also presented their claim to the union negotiators, however, it did not include any family provisions (see Table 8.1). The main item offered was a 1.5 per cent increase to wages and allowances per annum over three years. Another major item was that of tea breaks. A tea break was not available to all staff nationally, and the employer offered a tea break to all staff but only when an employee worked more than four hours; the union’s clause required a break when employees worked four or more hours.

The company also sought additional flexibilities in staffing, particularly to change the clauses governing ‘key operational periods’, which were the company’s busiest times of the year, such as Christmas, the annual January sales and mid-year sales. These were: firstly, to increase the number of hours that part-time staff could work for these periods. The second element, which was not specifically detailed in the claim, was for the imposition of ‘black outs’ on annual leave during key operational periods, so that employees would not be able to take leave during these busy periods (interview with union Secretary, 17 February 2009). The union agreed to consider these claims (interview with union Secretary, 13 February 2009).

The management negotiators also sought to reduce the amount of leave accrued, by enabling employees to cash out annual leave and to take an increased number of annual leave in single days (RetailCo, 30 January 2009, RetailCo Log of Claims: SDA Negotiations 2009). The union agreed to consider these claims. The managers also proposed decreasing the weekly minimum number of hours from nine to three for part-time employees, which would enable further staffing flexibilities, as fewer staff could be employed during non-peak periods. The union negotiators did not agree to this claim, as they were concerned that this would undermine the status of part-time work, resulting in it not being seen as ‘meaningful employment’ (interview with union Secretary, 13 February 2009). At this point, the employer argued that any savings made would go towards a wage increase, however, the union did not agree with this approach. The issue of trade-offs and using savings to bolster the wage increase, however, continued to be a feature of these negotiations (interview with union Secretary, 13 February 2009).
The employer also responded to the union’s claims at this second negotiating meeting. As well as almost ‘entirely disagreeing’ with the claim, the management negotiators disagreed with the paid parental leave claim, saying the company could not afford it (interview with union Secretary, 13 February 2009). However, they did agree to consider the claim for converting unused sick leave to carer’s leave. The union Secretary reported that:

‘...the company recognises that people who’ve got a large accumulation of sick leave are good employees, and so they do want to do something for those people in recognition of the fact that they don’t use up all their sickies. So I think something will come out of that....’ (interview with union Secretary, 13 February 2009).

This item may also not have incurred significant costs to the employer, as it would have been limited to long-term employees with dependents, in a workforce populated with many young workers.

At the end of the initial negotiations, the parties had presented their claims and their first responses, and had begun discussing the issues and assessing the other party’s positions. However, while the parties’ responses to the others’ claims were still being established, the union was already preparing to concede the paid parental leave claim. The union Secretary had developed a bargaining strategy, and informed the Branch Secretaries:

‘...I’ve said to our branch secretaries...of the claims that cost money, we really should be focusing on the wages outcome, because if we were, for example, to get an expensive maternity leave benefit up, which only benefits a small proportion of the employees, that’s going to come off the wage increase, which everybody gets. My view has been that this time around we should really be concentrating on the money, and if the company strongly resists the other claims which cost money, then we should, perhaps, eventually decide to drop them...(interview with union Secretary, 13 February 2009).

This statement highlights several issues relevant to equality bargaining, and these are detailed later in the chapter. However, it is sufficient to note here that paid maternity leave was one of the first items which the union Secretary decided to remove from the claim. This action also highlights a disjunction between the union’s underlying arguments for paid parental/maternity leave, as the union Secretary had earlier stated that this claim would not be an overly large impost on employers due to the workforce demographics.
The negotiations continued a few days later in February 2008, with a number of the smaller, uncontroversial claims being settled, such as compassionate leave being able to be used for a niece or a nephew, as well as for immediate family, and when pay slips would be available to staff. The RetailCo negotiators also confirmed their inclination to agree to excess sick leave being converted into carer’s leave, but they modified the union’s claim, which was for an unlimited amount of personal leave over 300 hours to be used as carer’s leave. They indicated they would be prepared to agree to an additional two days carer’s leave being taken from the sick leave accumulation, on three occasions a year. This could result in an additional non-cumulative six days carer’s leave in a year (interview with union Secretary, 17 February 2009).

The union negotiators agreed to this provision, however, wanted the six days to be taken at the employee’s discretion and not be limited to separate occasions, a position which was agreed to at the following meeting in March 2009 (interview with union Secretary, 20 March 2009). However, while offering this increased family provision, the RetailCo negotiators strengthened opposition to the union’s paid parental leave claim, believing that it would be too expensive, particularly as the organisation was not overly financially profitable (interview with union Secretary, 17 February 2009).

The negotiations also focused on the operational flexibilities the company was seeking. The company’s claim for an increased period for annual leave black outs would have prevented employees from taking leave during school holidays, which could cause difficulties for employees who needed to care for school aged children. The union negotiators did not agree to this, but did indicate a preparedness to agree to employees voluntarily working additional hours during key operational periods, as staff often needed additional work around these times, particularly Christmas. This provision would therefore benefit both the employer and employees.

By February 2008, three months after the union negotiators had presented their claim to the RetailCo managers, only less important bargaining items had been negotiated and agreed by the parties. The union was reluctant to accede to provisions which they believed were only cost-cutting measures and which did not enhance productivity, and the management negotiators were reluctant to agree to provisions which would incur costs. The negotiations had slowed.
8.4.1 Negotiations progress towards resolution

In March 2009, the union negotiators agreed that part-time and casual staff could work additional hours beyond the stipulated 144 hours a month during key operational periods, to 152 hours over any four weeks, with a maximum of forty-eight hours in a week (cl. 11.2.1, RetailCo Agreement 2006; interview with union Secretary, 20 March 2008). Any increase in hours was to be voluntary and subject to the employee having the right to refuse work due to family responsibilities (interview with union Secretary, 20 March 2009).

The union negotiators agreed to extended key operational periods, which were then three discrete periods of the year around sales times, which included all of December and two other shorter periods, totalling about two months in the year (cl. 13.8.3, RetailCo Agreement 2006). The union negotiators agreed that key operational periods could be extended to two longer periods, which would include four months around Christmas, bringing the total period to around six months, ‘a very significant flexibility’ (interview with union Secretary, 20 March 2009).

Another part of the employer’s claim for key operational periods was for the extension of ‘black out’ periods, when employees would not be able to take annual leave. The employer wanted ‘black outs’ for all of the key operational periods, and the union agreed to this except for around Easter, as this was the time of school holidays when parents would need to care for children. RetailCo accordingly accepted this position. Another proposed black out would cover the annual stock take period in June, which would coincide with school holidays only in Tasmania, where the school terms were different from the rest of Australia. The union was opposed to black outs in this period and explained that ‘this would be saying to employees, if you’ve got kids in school, don’t come and work for RetailCo’ (interview with union Secretary, 20 March 2009). This item remained in contention.

Other items were also finalised. The union agreed to an increase in the number of days annual leave which could be cashed out, as long as the employee still had four weeks leave accrued. The union negotiators also withdrew their claim for an increased loading to be paid to casual employees, again on the reasoning that such an increase would detract from a pay rise. The union Secretary also decided to withdraw the
claim, this was later discussed with the branch secretaries, and then communicated to the employer at a subsequent meeting.

The RetailCo managers responded to some of the union claims, indicating that they were prepared to agree for all employees to have a tea break once they had worked four hours or more, which would make this existing entitlement universal for all employees. However, this agreement was dependent on the union’s responses to their other claims, with the wage offer being the main issue. The employer’s offer of a 1.5 per cent per annum pay rise was still unacceptable, and the union Secretary was aware that this would be one of the last items to be negotiated. Other items had to be negotiated and ‘gotten out of the way’ first (interview with union Secretary, 20 March 2009). Also in regards to wages, the employer agreed to an increase in the minimum supported wage, to $69 a week, fulfilling one of the union’s core claims.

In addition to the wage increase, a large number of items were still unresolved, including key operational periods, and the minimum number of hours that part-time employees could be required to work. Smaller items had been settled, there was agreement or an indication of agreement on several of the major items and both sides had withdrawn some of their minor claims. The parties were moving closer towards resolution, as senior representatives of both organisations traded off claims and made compromises.

Union delegates and members were not informed about these processes and the status of negotiations, with the union officials making decisions as the negotiations progressed, as per union custom and practice. Members would only be informed once the negotiations had been finalised. The union Secretary did not ‘see any merit giving [members] a report part way through unless you’re bogged down’ (interview with union Secretary, 4 May 2009).

8.4.2 Resolution
Two more negotiating meetings occurred in late March 2009. Simultaneously, RetailCo reported on their sales, showing that the company was not doing well financially, with only a 0.1 per cent sales increase (interview with union Secretary, 23
April 2009). The RetailCo managers were still proposing a 1.5 per cent per annum pay rise, which the union negotiators continued to view as unacceptable.

The union Secretary was aware of the employer’s financial position, particularly as the GFC was occurring, and formally withdrew the union’s paid parental leave claim:

‘...our position...is that we’re not going to proceed with that [the paid parental leave] claim any further because [RetailCo] are adamantly opposed to it and because they’re crying poor. Anything which costs them cash like this would, is ultimately going to detract from what we’re going to finally get as a pay rise for all employees, and in any event you’ve got the government poised to do something on paid maternity leave at some point. Maybe not straight away, but within a year or two I have little doubt the government will have delivered paid maternity leave, funded by itself’ (interview with union Secretary, 20 March 2009).

The union Secretary provided yet another reason for the removal of the paid parental leave claim:

‘...(t)he company knows that we reached an agreement with [competitor] last year that doesn’t include it [paid parental leave], and their attitude is ‘why should we agree if you let [competitor] off the hook?’ (interview with union Secretary, 20 March 2009).

This statement shows that comparative negotiations can also be used against the provision of entitlements as well as being an argument for the introduction of equality items.

The union had flagged withdrawing the paid parental leave claim since early in the negotiations, then formalised it with the employer towards the end, when the major outstanding issue was the wage increase. In effect, the paid parental leave claim – with the claim for an increased loading for casual employees – were used as bargaining levers for a wage increase. While parental leave was taken off the bargaining table, the employer compensated somewhat by formally agreeing to the claim for excess personal leave to be used as carer’s leave for an additional six days a year (interview with union Secretary, 20 March 2009).

Also in March 2009, the bargaining parties reached agreement on a range of issues. The employer agreed to the union’s tea break claim, an item the union Secretary ‘never expected to get’ (interview with union Secretary, 23 April 2008). Disagreement
remained on the minimum number of hours for part-time employees, and the quantum of the wage rise. Negotiations did conclude, via telephone calls, between late April 2009 and early May 2009, with wages being the last item to be resolved. In April, RetailCo negotiators presented the union negotiators with a revised wages claim totalling 6.25 per cent over three years. The increase was dependent on an increased black out period which would result in annual leave not being available in Tasmania for several periods, including during school holidays. The union negotiators therefore refused the wage offer (interview with union Secretary, 4 May 2009). This indicates that the union negotiators, particularly the union Secretary, was committed to ensuring that these employees could balance work and family responsibilities during these periods. The management negotiators then came back with another offer, totalling 7 per cent over three years and also dependent on the annual leave black out in Tasmania, as well as reducing the minimum number of hours for part-time employees and reduced penalty rates. This was also refused by the union.

Negotiations continued between the parties, with agreement settling on a wage increase of 8.5 per cent over three years, with the greater increases occurring in the second and third years (interview with union Secretary, 4 May 2009). This was comparable with the wages increase secured for other major retailers. The parties compromised on the annual leave black outs in Tasmania for employees with family responsibilities, with the company agreeing that ‘any person who has children at kindergarten or at school is able to take annual leave during those [school holidays]’ (interview with union Secretary, 4 May 2009). This satisfied both parties – the employer gained more staff during peak periods, and parents were still able to take annual leave in this period. The employer was unsuccessful with reducing the minimum hours for part-time employees, which remained at nine hours a week (cl 11.2.3, RetailCo Agreement 2009).

After the negotiations were finalised in May 2009, organisers met with delegates and union members in over 180 stores nationally, across all shifts, including evening shifts, to explain the new agreement and to have it approved. The union stated that this was an enormous logistical undertaking which would take months to complete (interview with union Secretary, 23 April 2009). The delegates in each store were presented with the proposed agreement first, and this was then circulated to union
members, who also had access to documents explaining the proposed agreement (interview with union Secretary, 4 May 2009).

This was the first communication that delegates and members had received from the union since the claim was developed, as issuing bulletins during negotiations was ‘the exception, not the rule’ (interview with union Secretary, 8 September 2008). This level of member involvement is explained:

‘...how could you have effective involvement by employees when there are 185 stores, each store is separate, the workforce is about 26,000, how can you have effective employee representation?...You just can’t do it. So that’s why we do it the way we do, by having an involvement of delegates at the start, at the formulation of the claims, and having a role for the delegates at the end. Firstly, in being the first to hear the results of the negotiations and being invited to recommend it to the members, and then the delegates themselves being involved in the rolling out of the agreement to members and conducting of the vote. So it’s about as involved as I think it’s reasonably possible to get, without totally getting bogged down’ (interview with union Secretary, 4 May 2009).

Approximately 97 per cent of employees voted to approve the agreement (SDA, 17 August 2009, email from union to researcher), which duly became operative from 30 April 2009 (RetailCo Agreement 2009).

8.5 Outcomes of the negotiations

Both the SDA and RetailCo conceded a substantial number of claims, but both also made some gains. Table 8.3 summarises the main gains for the bargaining parties.

The union was successful with three of the four claims initiated by the union’s national office. The union secured increased wages, gaining an 8.5 per cent pay rise over 3 years, which did not meet the initial claim of 5 per cent a year, but was a considerable advance on the company’s initial 1.5 per cent offer. Allowances also increased in line with the pay rises. The minimum payment for an employee on a supported wage also increased from $62.00 to $69.00 per week, as per the union’s original claim. Improved rostering was secured through all staff being able to take a tea break after four hours of work.

The union negotiators did not secure any increase in the fourth main item, paid parental leave, and in fact, it was removed from their claim. The union did, however,
gain increases to another important family provision, that of carer’s leave, which would benefit long-term staff. Employees with over 300 hours sick leave could access an additional six days’ carers leave from their sick leave. The union also won a range of other claims, including employees being able to use compassionate leave for the death of a niece or nephew (SDA, undated, RetailCo Agreement 2009: Summary Document).

Table 8.3: Comparison of SDA and RetailCo Negotiated Outcomes

<table>
<thead>
<tr>
<th>Main SDA Outcomes</th>
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<tbody>
<tr>
<td>• 8.5% increase to wages and allowances&lt;sup&gt;5&lt;/sup&gt;</td>
</tr>
<tr>
<td>• Supported wage increased to minimum of $69 per week</td>
</tr>
<tr>
<td>• Ten minute tea break after 4 hours work</td>
</tr>
<tr>
<td>• Employees are entitled to use up to 6 days sick leave as carer’s leave where they have more than 300 hours of sick leave accrued</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Main RetailCo Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Key operational periods extended:</td>
</tr>
<tr>
<td>- October to February, Monday before half yearly stock take to last Sunday in July&lt;sup&gt;6&lt;/sup&gt;</td>
</tr>
<tr>
<td>- part-time and casual employees can work up to 152 hours in 4 weeks&lt;sup&gt;7&lt;/sup&gt;</td>
</tr>
<tr>
<td>- annual leave black outs extended&lt;sup&gt;8&lt;/sup&gt;</td>
</tr>
<tr>
<td>• 2 weeks annual leave can be cashed out, as long as employee maintains 4 weeks leave&lt;sup&gt;9&lt;/sup&gt;</td>
</tr>
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The management negotiators gained important provisions to increase operational flexibilities. The key operational periods were extended, meaning that more staff would be available to work during the busiest periods and annual leave black outs were also extended. Employees would also be able to cash out up to two week’s annual leave in a year – this would reduce the amount of leave available to employees and also result in more staff being available to work. Other provisions to increase staffing flexibilities were also not secured, such as reducing the minimum number of hours that part-time staff could work.

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<sup>5</sup> SDA, undated, RetailCo Agreement 2009: Summary Document.
<sup>6</sup> cl. 6.7, RetailCo Agreement 2009
<sup>7</sup> cl. 13.5, RetailCo Agreement 2009
<sup>8</sup> Interview with union Secretary, 4 May 2009
<sup>9</sup> cl. 17.12, RetailCo Agreement 2009
In summary, both bargaining parties gained significant improvements, with the tea breaks and wages being most important to the union, and the increased operational flexibilities the most important for the managers (interview with union Secretary, 23 April 2009). The negotiations were cordial and straightforward and conducted efficiently with items being traded off and compromises made. There were a number of factors which contributed to this efficient bargaining, and which impacted on negotiating for family provisions, and these are discussed next.

8.6 Identifying equality bargaining and facilitative and inhibitive factors

The union negotiated a range of family provisions, with the main claims being for the introduction of paid parental/maternity leave and increased carer’s leave provisions. The union engaged in a narrow form of equality bargaining which aligns with Heery’s definition, as the union did indeed ‘bend’ the bargaining agenda to benefit female employees (2006b, 522). However, a broader form of equality bargaining was not undertaken. An assessment can be made using Dickens’ broad definition of equality bargaining, which contains three elements. These are negotiating items of particular benefit to women; identifying gender issues in non-gendered bargaining items, and addressing gender disadvantage (1998, 390).

The equality bargaining undertaken fulfils some, but not all of these criteria. Firstly, the parties did indeed negotiate issues of benefit to women – the main ones were for the introduction of paid maternity leave and increased carer’s leave. A range of low cost items were also negotiated, including amending a clause to not allow staff to take annual leave during certain times of the year so that it would not negatively impact on a group of employees, and compassionate leave was also extended to cover the death of a niece or nephew.

Secondly, not all claims were examined for their gendered aspects or impacts on parents. While the union negotiators conducted an informal equality analysis of some provisions, in particular the claim for annual leave which would have negatively impacted on employees with school aged children, this was not a gender analysis. Items that did not obviously have a gender component were also not analysed for their gendered implications.
Thirdly, there were also no claims to pursue equality for women which did not revolve around family responsibilities, thereby conforming to a very narrow conception of equality, focused on women’s reproductive roles (as discussed by Kravaritou, 1997). The union’s claim did not contain any explicit, or even implicit, items to implement equal opportunities for female employees, beyond the realm of family provisions. Therefore the third element of Dickens’ definition, requiring a proactive approach to pursuing equality through bargaining, was not fulfilled.

While the negotiations can be seen as a narrow form of equality bargaining, the equality bargaining undertaken was also not entirely successful. The union did not secure the introduction of paid maternity leave, and it was traded off quite early in the negotiations. The inclusion of the paid maternity leave claim was symbolic – it demonstrated the union’s commitment to pursuing equality for female employees through collective bargaining, but that was all. It was not successfully negotiated and was traded off quite easily. Different factors resulted in the success – or otherwise – of the equality bargaining undertaken in this case study, and the next section examines this, within the national, industry and organisational levels. This is also depicted in Figure 8.2.

8.6.1 National factors
This case study demonstrates the impact of national factors on equality bargaining. The two factors identified in this case study have both been identified as being external factors for equality bargaining. The first is the national inquiry into paid parental leave conducted by the Productivity Commission at the time of the negotiations. The second is the state of the Australian economy and the specific internal economy of RetailCo.

i) Paid parental leave policy development
The national inquiry into paid parental leave and the expected government response impacted on these negotiations. The union had been engaged in advocating for a national paid parental leave scheme, and made a submission to the inquiry and appeared at the hearings. The union had also produced a pamphlet which the union Secretary thought was likely to have resulted in increased awareness among members (SDA, undated). However, while the inquiry and accompanying community campaign
increased awareness and possibly support amongst union members, it was also an inhibitive factor on the equality bargaining undertaken by the union.

As has been shown in this chapter, the union did not pursue this specific claim for a range of reasons, including that the union Secretary expected that the government would introduce paid parental leave in response to the Productivity Commission inquiry. As discussed in Chapter Four, the introduction of a national paid parental leave scheme was not a certainty due to the economic climate in early 2009, with the GFC causing unemployment and the government funding stimulus packages to prevent a recession (Rudd and Swan, 2009). The media speculated that the government would therefore not be able to afford to fund a national paid parental leave scheme (Baird and Williamson, 2010 357). The union Secretary, however, was confident that a scheme would be introduced, and was ultimately proven correct. So two effects of the national paid parental leave policy development are evident here – it increased awareness but also, in the Secretary’s eyes, absolved the union from negotiating paid parental leave.

ii) Fiscal factors
The economic downturn also impacted on bargaining for paid maternity leave, as did the financial situation of RetailCo. This case study supports research which finds that equality provisions are more likely to have currency in times of prosperity and may not continue to be supported in times of recession (Dickens, 1998, 18). The GFC impacted negatively on the economy by reducing the discretionary spending of consumers. This then impacted on the negotiations, as the resulting decreased sales for RetailCo meant that the company did not support a claim which would incur costs, and the union decided to discontinue negotiating an item which could take money away from a wages increase. Unlike other retailers, the RetailCo managers did not decide to introduce paid maternity leave of their own volition, and the union did not pursue this claim in the current economic climate.

Introducing a paid maternity leave scheme in RetailCo may have imposed significant costs on the employer, as the workforce was large, with 26,000 employees, and female-dominated. However, the workforce also contained younger, older and ineligible casual employees who would not use the entitlement. The cost of the
scheme was not known, as neither party costed the claim. Costs would have been incurred though, and this was a key factor in the both parties not pursuing paid maternity leave. Low cost family provisions however, were negotiated and increased. The union introduced the claim for excess sick leave to be converted to carer’s leave, and the employer agreed but limited it to six days’ additional leave per year. This supports Dickens’ (1998, 18) findings that a recession does not automatically mean that family provisions will not be introduced.

8.6.2 Industry factor: benchmarking

The main industry factor which impacted on the negotiations was the use of competitors as industry benchmarks. The increasing incidence of paid parental leave in large retail companies generated some momentum for comparable companies to also introduce paid maternity/parental leave through HR policy. Employers used the business case as a reason to introduce paid parental leave and this then influenced the union Secretary to bargain for paid maternity leave.

While research has found that unions use collective bargaining to progress equality, and employers use HR policies (Olgiati and Shapiro, 2002, 110), this research has not examined the linkages between the two. This case does so by demonstrating the interaction between HR policy and bargaining, finding that benchmarks arising from employer initiatives can inform union claims and subsequent negotiations. Ultimately, however, the employer successfully used industry comparators to argue against paid parental leave, as a very close competitor had not introduced this leave in their most recent enterprise agreement.

8.6.3 Organisational factors

This case study presents a range of organisational factors which contributed to, or inhibited bargaining for family provisions. The centralisation and strength of union leadership was undoubtedly the overriding organisational factor evident in these negotiations, reflecting the influence of one key person. This was both a environmental, external factor, as well as an inhibitive factor for the equality bargaining which occurred. Other factors, however, were also present, relating to the relationship between the parties, and are discussed below.
i) Union leadership

Union leadership was a driving force in these negotiations which impacted on bargaining for family provisions. The major factor both inhibiting and facilitating equality bargaining was the union Secretary, the ultimate source of union power in these negotiations. The Secretary made the decisions and set the bargaining strategies. The Secretary included paid maternity leave in the claim, and also directed for it to later be removed. The other union negotiators were consulted in this decision, but it was the union Secretary who instigated and directed this position. In this case, the union Secretary was effectively a gate keeper to equality bargaining. This is closely related to another factor which inhibited equality bargaining – majoritarianism.

ii) Majoritarianism

The union Secretary removing paid maternity leave from the union’s claim is an example of majoritarianism, where items which benefit a ‘minority’ – in this case a sizeable minority of female employees - are traded off for items which specifically benefit all (such as wages) (Wever, 2003. 245; Blackett and Sheppard, 2003, 421). While the cost of a paid maternity leave scheme was the main reason for the removal of this claim, this resulted in a form of majoritarianism and the item was not negotiated. Although exact demographics of the RetailCo workforce are not available, it was estimated that at the time of the negotiations, about 80 per cent of RetailCo employees were female (interview with union official, 15 April, 2010). While many of these women would not have used paid maternity leave, this provision would still have benefited a great many female RetailCo employees. The union Secretary however, unilaterally decided to remove the claim from negotiations, in favour of a wages increase.

Researchers have found that unions have been slow to negotiate or campaign for items of particular benefit to women, instead focusing on the needs of the traditional male dominated workforce (Blackett and Sheppard, 2003). The trading off of parental leave may be an example of this, compensated to some extent, by an increase in another important entitlement, that of carer’s leave. However, the improved carer’s leave provision would not be costly to the employer, as essentially the improvement involved changing a portion of sick leave to carer’s leave, costs for which the
employer had to account anyway. This provision would also only be available to long-term employees, who had accrued the requisite amount of carer’s leave, further reducing the potential cost of this provision.

**iii) Convergence of interests**

The employer was agreeable to providing increased carer’s leave as a reward for long-term employees who had shown themselves to be ‘good’ employees, by not using all their sick leave. The union also saw this as an inexpensive provision which would benefit employees. This demonstrates a convergence of interests, reinforcing research findings that a convergence can lead to successful equality bargaining (Alemany, 1997, 97; Colling, 1997, 12). The employer, however, capped the leave at an additional six days’ per year, which would prevent this entitlement being too costly. The employer may also have been more willing to agree to this provision as it was an extension of an existing provision, rather than a new provision, and not one which the union was likely to build on in subsequent agreements, as was paid maternity leave.

**iv) Bargaining relationship**

The bargaining relationship indirectly impacted on negotiating for family provisions. The parties displayed an open and trusting relationship, as evidenced by the management negotiators presenting business information to the union negotiators. This enabled the union to fully understand the business environment, which was a major consideration as negotiations progressed. The negotiations were respectful and according to the union Secretary, both parties approached the bargaining very pragmatically against a background of mutual understanding and a very long term relationship between the two organisations, even though the management negotiators were new to RetailCo. This relationship resulted in both parties engaging in trade-offs to arrive at mutually satisfactory outcomes, indirectly leading to the final positions on paid maternity leave and carer’s leave.

**8.7 Conclusion**

This chapter has presented the negotiations between a large national retailer and the Shop, Distributive and Allied Employees’ Association. The chapter commenced with an overview of wages and employment conditions – including family provisions – in the retail sector, before profiling the bargaining parties. The negotiations were then
detailed, showing that both parties had extensive claims, which they then proceeded to negotiate and trade off until only the quantum of the wage increase was left to determine.

This case study has several significant findings. The main one is that a narrow form of equality bargaining was undertaken, which did not include items other than those related to women’s caring roles. The form of equality bargaining undertaken was symbolic of the union’s commitment to gender issues, but not to achieving substantive gender equality. The case study also highlights the impact of national and organisational factors. Firstly, the broader economic environment as well as RetailCo’s financial position impacted on the equality bargaining which occurred. The impact of the second national factor was that while government policy can increase awareness of family provisions, as was the case with the paid parental leave inquiry, government policy can also deter bargaining for equality items. Finally, organisational factors, notably the strong and centralised union leadership was also a factor which both facilitated and worked against equality bargaining. While union leadership and commitment is an essential factor for successful equality bargaining, a union leader can also act as a gatekeeper and inhibit or limit equality bargaining matters.
FIGURE 8.2
Factors Impacting on Equality Bargaining: SDA and RetailCo

Facilitative Factors

Inhibitive Factors

- Productivity Commission inquiry
- Global Financial Crisis

External - national level

Economic environment

Public policy
(Productivity Commission inquiry)

BARGAINING

- competitors did not introduce pfml

External - industry level

UNION
- Business case, building on HR policy

- centralised union leadership
- organisation’s finances
- majoritarianism

Internal - union/organisational level

- convergence of interests
- good bargaining relationship
- reward long-term employees

OUTCOMES
- increased family provisions, particularly carer’s leave
Part Three

Chapter Nine

Analysis of Findings

9.1 Introduction
The research questions for this thesis emanated from the previous research conducted on equality bargaining and the particularities of the contemporary Australian industrial relations system. The questions therefore originate both from a theoretical background as well as from an empirical base. The literature review canvassed the main definitions of equality bargaining and identified the factors at the supranational and national levels, industry, and organisational levels which impacted on equality bargaining. The contextual chapter detailed how family provisions have been provided in Australia through various forms of regulation, namely test cases, legislation, bargaining and social policy, highlighting the considerable movement and activity in these areas.

The research questions which arose from a convergence of these theoretical and empirical foundations were:

1. Would unions negotiate for family provisions in a changing industrial relations and social policy environment?
2. If unions did negotiate for family provisions, did a form of equality bargaining occur in the five case studies under examination?
3. If equality bargaining was found to have occurred, how did unions ensure family provisions were included on bargaining agendas and negotiated? What were the facilitative or inhibitive factors which impacted on the equality bargaining undertaken?

The case studies showed that unions did engage in equality bargaining, and also uncovered the factors which lead to, or inhibited family provisions being included in final collective agreements, some of which reinforced previous research, others which are new. This chapter draws the findings of the case studies together to make two
important contributions to the research on equality bargaining. Firstly, the chapter shows that there are different types of equality bargaining. Rather than broad or narrow, there is a continuum of equality bargaining and unions can move along this continuum. Secondly, this chapter reveals a range of facilitative and inhibitive factors which impacted on the equality bargaining undertaken in the case studies.

9.2 The continuum of equality bargaining

An analysis of the literature, combined with the findings of the case studies, has led this researcher to conclude that equality bargaining occurs on a continuum from narrow through to broad and then to transformational. The definitions developed by Heery (2006b), and Colling and Dickens (1998) form the basis of the equality bargaining continuum and feature most prominently in the case studies, as depicted in Figure 9.1.

9.2.1 Narrow equality bargaining

Heery defines equality bargaining as ‘bending the bargaining agenda to serve the needs of women’ (2006b, 522). Heery examined the context in which unions were bargaining for pay equity in the UK, and limited his examination of equality
bargaining to this one issue, however, pay equity was broken down into fifteen elements which covered many equal opportunity issues. This lead this researcher to conclude that bargaining for one, or only a limited number of equality provisions, forms a narrow type of equality bargaining, which is the first stage in an equality bargaining continuum. In this early stage, equality bargaining is likely to centre on traditional ‘women’s issues’, revolving around women’s caring responsibilities, even though Heery’s research is an exception.

Corresponding to the first stage in the continuum, paid parental/maternity leave was the only family provision or equality item negotiated in three of the five cases – in the LHMU/SecurityInc and the two NSW Nurses’ Association/HealthCo/HospitalOrg negotiations. The NSW Nurses’ Association paid parental leave claim included several elements as the negotiations progressed – to introduce or increase the quantum of paid parental leave across all workplaces; to include paid parental leave in human resources policy; and to have negotiations reopened once any government response to the Productivity Commission inquiry into paid parental leave was known. The negotiators adopted a flexible and nuanced approach to bargaining for paid parental leave, which was responsive to the wider regulatory and social policy development occurring at the time. The NSW Nurses’ Association did not, however, include any other gender equality items or family provisions in their claim, indicating a narrow form of equality bargaining was undertaken.

The negotiations between the SDA and RetailOrg also demonstrate a narrow type of equality bargaining, where only a few equality items were negotiated, which were all family provisions. As well as paid parental leave, the union’s claim included increases to carer’s leave as well as a minor family provision of extending bereavement leave to nieces and nephews of the deceased. Even though several family provisions were included on the bargaining agenda and negotiated, no provisions apart from family provisions were considered. The main family provision of the claim – paid maternity leave – was even traded off for a wages increase, further demonstrating a narrow form of equality bargaining, which was not entirely successful.
9.2.2 Broad equality bargaining

The second stage along the equality bargaining continuum incorporates Colling and Dickens’ definition. To recap, their definition requires that equality bargaining:

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

Essentially therefore, this definition requires that equality items be negotiated; negotiators conduct a form of gender analysis of all claims; and that the resulting agreement address ‘gender disadvantage’ and work towards eliminating structural discrimination against women.

As discussed, all the case study union negotiators bargained for family provisions, thereby negotiating special measures for women. The CPSU’s claim however, demonstrated the union’s awareness not only of the needs of employees with family responsibilities, but also included other gender equality items beyond family provisions. The bargaining claim and negotiations included an improved wages classification structure, which would also contribute to achieving gender pay equity for this female-dominated organisation, which had lower pay scales than other Australian Public Service agencies.

The second element of the definition requires that negotiators demonstrate an equality awareness of commonplace bargaining items. Neither the LHMU or NSW Nurses’ Association negotiators conducted a gender analysis on their claims or demonstrated such awareness. The SDA did conduct an ad hoc, informal gender analysis on one item, limited to a consideration of how changes to holiday rostering could impact on parents. However, the SDA did not undertake a gender analysis or bring an equality awareness to other items. The CPSU leaders, officials and negotiators did, however, demonstrate such awareness, with gender featuring throughout many – but not all claims – including for wages, travel, and increased family provisions. The CPSU negotiations largely fulfil this broader definition of equality bargaining.
9.2.3 Transformational equality bargaining

The broadest form of equality bargaining requires negotiating innovative provisions, such as clauses for leave for women experiencing domestic violence (Briskin, 2006, 33). Transformational bargaining also requires negotiating provisions for other equal opportunity population groups apart from female employees (Briskin, 2006). This stage can also extend beyond the formal conclusion of negotiations, so that women are involved in the monitoring and implementation of the agreement (Dickens, 1998, 18). This researcher has concluded that this type of bargaining is transformational, and would change both the domestic sphere as well as workplaces to achieve equality for women and other EEO population groups.

The CPSU negotiations partially fulfilled the requirements of the transformational type of equality bargaining, depicted in the third segment of Figure 9.1. The CPSU’s ‘core’ claim included provisions to assist other equal opportunity target groups (including male and female mature aged workers) and improved provisions for these employees were successfully negotiated. Generally however, the items for mature aged employees and other groups were not extensive. Additionally, the core claim did not include any truly innovative provisions to achieve equality for female employees, such as a clause for leave for women experiencing domestic violence.

To summarise, negotiations for family provisions were undertaken in each of the case studies, however in the LHMU and SecurityInc; NSW Nurses’ Association and the two private hospital companies; and the SDA and RetailOrg negotiations, a narrow form of equality bargaining was undertaken. Generally then, apart from the CPSU, the unions involved in this research showed a very limited engagement with equality bargaining. Paid maternity leave was the overriding – and obvious – family provision for negotiations for three of the four case study unions. As will be discussed in the next section, paid maternity leave was the easiest equality item or family provision to negotiate because of a particular convergence of factors. The commitment to equality bargaining was largely symbolic – it was a symbol of a commitment to gender equality, but not to achieving substantive gender equality.
FIGURE 9.2
Major Factors Impacting on Equality Bargaining in Case Studies

Facilitative Factors
- Economic and business environment
- Industrial relations framework
- Public policy (Productivity Commission inquiry)

Inhibitive Factors
- National level
  - Productivity Commission inquiry and campaign
  - Global Financial Crisis
- Industry level
  - Not wanting to be industry leader; union and employer not realising
  - Competitors not introducing family provision
- Organisational level
  - Low trust bargaining relationship
  - Delegates' attitudes and posturing
  - Majority unionism
  - Lack of educating members about family provisions
  - Centralised union leadership
  - Organisation's finances
  - Lack of centralised knowledge of existing provisions

Employer
- Industry benchmarks
- Staff shortages within industry
- Employer initiated claims
- Leadership - included community standard; business case; good corporate citizen

Union
- Union leadership
- Campaigning
- Core claim; gender mainstreaming of claim; given high priority
- Industry benchmarks/ standardisation/ flow on
- Business case; building on HR policy
- Increased member involvement
- Moving HR provisions into enforceable instrument

Internal - Union/organisational level
- Collective action
- High level of activity by members
- Strategic and extensive campaigning
- Convergence of interests
- Awareness of current provisions
- Business case
- Pragmatic or good relationship
- Leadership between the negotiators
- Overcoming union members' resistance
- Experienced negotiators

Outcomes
Increased family provisions, particularly paid parental leave
9.3 Regulatory levels and factors facilitating equality bargaining

This section discusses the factors which contributed to, or inhibited successful equality bargaining. As discussed in Chapter Two, Dickens (1998) categorised factors which contribute to equality bargaining into four regulatory levels. These are the 1. supranational, 2. the national 3. industry level, (which are all external to bargaining) and 4. the organisational level, which contains factors internal to the union or organisation. Supranational factors are not discussed in the following section, as these were not found to be directly relevant to this particular research (as they were in the EU context). The factors at the remaining three regulatory levels are depicted in Figure 9.2.

9.3.1 National level factors

There are three main national level factors which impacted on the various types of equality bargaining undertaken in the cases. These were, the industrial relations framework, the Productivity Commission inquiry into paid parental leave, and the economic and business climate.

i) Industrial relations framework

The case studies demonstrated the impacts of a decentralised industrial relations environment on equality bargaining, as well as the effects on equality bargaining resulting from the introduction of Work Choices. The direct effects of decentralised wages and conditions were evident in only one of the case studies, in the negotiations between the CPSU and PublicOrg. The APS was particularly affected by decentralisation, as the previous conservative Coalition government vigorously promoted and mandated enterprise level bargaining for its own employees through the Workplace Relations Act and bargaining guidelines for the APS. This resulted in a wide discrepancy in the amount employees who were performing similar jobs in the APS were paid and the level of workplace entitlements available, including for paid maternity leave.

As detailed in Chapter Five, the CPSU had embarked on a three pronged strategy to counter the fragmentation of wages and conditions as well as to survive in an industrial relations climate hostile to unions. Firstly, the union changed its structure to increase member involvement, moving from being a servicing union to one focused
on bargaining. Secondly, the union developed officials who were expert in either campaigning or negotiating, and thirdly, developed and implemented a core claim (which will be further discussed later in this chapter). These changes strengthened the union governance structures and member involvement, which proved to be necessary and useful throughout the negotiations, particularly when collective action was taken in PublicOrg to support campaigning for carer’s leave.

The CPSU changed its structure in response to the Workplace Relations Act; the NSW Nurses’ Association underwent similar changes in response to Work Choices. As detailed in Chapter Six, the NSW Nurses’ Association changed its structure and member involvement to increase members’ engagement. Increased member involvement provided additional support and information to the union negotiators, particularly when developing tactics to bring the employer back to the bargaining table. Ironically then, Work Choices may have benefited the NSW Nurses’ Association, as it resulted in increased member involvement and strengthened the union. This can also be seen as a microcosm of the wider union and community movement against Work Choices, which increased solidarity within the union movement and also increased the relevance of unions to many workers and their communities (Muir, 2008, 183-207).

This strengthening occurred at a time when unions were experiencing increased difficulties – these more difficult times did, in fact, lead to the unions’ restructuring to increase strength. Gregory and Milner, citing Colling and Dickens, noted, ‘(u)nions have modernised their policies and their internal organisation and practice, but paradoxically they have done so at a time when their capacity to intervene is greatly reduced’ (2009, 124). As detailed in Chapter Four, this certainly occurred in these cases, with both waves of labour law curtailing union access to members and reducing the role of unions.

ii) Paid parental leave policy development: an external and internal, inhibitive and facilitative factor for equality bargaining

The Productivity Commission inquiry into paid parental leave was an external/national factor, as well as internal/organisational factor for equality bargaining. The fact that this issue can span both regulatory levels indicates the depth
of this issue and its far reaching impact at the time of the case study negotiations. Paid parental/maternity leave claims were included in all the claims in the case studies.

The national paid parental leave inquiry continued the momentum generated over the previous years – and decades – as a range of regulatory actors campaigned for the introduction of a national paid parental leave scheme. In particular, the ACTU was instrumental in raising awareness about the need for a national scheme. This role by comparable peak union bodies internationally has also been found to influence the provision of work and family policies. Gregory and Milner, citing Colgan and Ledwith, found that the UK Trades Union Council played a similar role as an umbrella organisation, ‘with no direct mandate for bargaining, but the possibility of influencing public debates and lobbying for employment legislation’ (2009, 133).

The paid parental leave campaign contributed to a climate in which discussions about paid maternity leave were prevalent and recognition that employees needed access to this provision increased. In all of the case studies, the unions had supported and participated in varying extents to the campaign for the introduction of a national paid parental leave scheme. While the debates and campaign were the result of lobbying and mobilising by women’s and community groups and other advocates, the ACTU and individual unions also played an essential role. This is further discussed below.

The paid parental leave policy development was also an internal/organisational factor which directly contributed to successfully bargaining for paid maternity leave. This directly flowed from the national level of regulation as unions complemented campaigning with bargaining at the enterprise level. Not only did unions negotiate for paid parental/maternity, the national policy development even influenced the form of one of the paid parental leave clauses negotiated in two cases. This is evidenced by the NSW Nurses’ Association securing a claim for discussions on the operation of the paid parental leave scheme to be reopened once the government response to the Productivity Commission inquiry recommendations were known. While this did not result in an immediate improvement in the paid parental leave provisions available to employees, it did provide the union with an opportunity to negotiate for future improvements.
a) Paid parental leave as an external factor: the impact of social policy

The successful paid parental leave negotiations in the case studies demonstrate the convergence of industrial relations and social policy. Paid parental leave policy is located in both these spheres, being framed as social policy in Australia, with the Australian government’s social policy department having carriage of developing the scheme (see Chapter Four). But paid parental leave is also a workplace entitlement, as evidenced by unions and employers bargaining for this provision.\(^1\) The development of a national paid parental leave scheme brings both regulatory spheres together.

Relatedly, Hantrais and Ackers (2005) noted the need for work and family policies to straddle social policy as well as industrial relations policy to break down the male breadwinner model of work and family. As discussed in Chapter Two, the male breadwinner model tends to assume that collective bargaining is concerned with economic issues, and equality issues are ‘social’ issues which are often left to individual employees to negotiate, or be provided through state mechanisms (Wever, 2003, 250; Blackett and Sheppard, 2003, 432). Blackett and Sheppard note that the divide between these two areas is narrowing, and these case studies reinforce this finding. However, as researchers have also noted, focusing on bargaining for family provisions can also reinforce gendered roles and perpetuate the male breadwinner norm, unless fathers are encouraged to use family provisions (Dickens, 1996, 21; Kravaritou, 1997, 43).

b) Paid parental leave as an external factor: an ‘opportunity structure’ for unions

Gregory and Milner (2009, 124) identified that an ‘opportunity structure’ to negotiate work/life balance measures was created in the UK, centring around the existence of legislation on working time. As discussed in Chapter Two, this opportunity structure was dependent on several elements, including supranational and national legislation which promoted work and family policies (based on working time regulation), internal equality within a union, and the opportunity for unions to complement state regulation on work and family. Similarly, Heery, on reflecting on the role that union negotiators played in negotiating pay equity, stated: ‘(u)union negotiators emerge from

\(^1\) See Baird, Frino and Williamson, 2009.
the study as pragmatic and opportunist, in the sense that they respond to openings for influence that originate in changing public policy’ (2006b, 539).

The ACTU had adopted a policy in 2003 that unions would bargain for improved paid and parental leave, and carer’s leave to show support for the Family Provisions test case, however, this policy was not subsequently reiterated once the test case was completed. Whether or not unions would undertake bargaining for paid parental/maternity leave was therefore not a certainty as new minimum entitlements for family provisions were introduced in the Fair Work Act, and with the possibility that a national paid parental leave scheme would be introduced. The case studies in this thesis suggest, however, that the unions did utilise an ‘opportunity structure’.

The opportunity structure consisted of two elements. These were firstly, that a space to negotiate paid maternity leave was created as other family provisions were incorporated into new industrial relations legislation. Most of the Family Provisions test case outcomes – including those expanding unpaid parental leave entitlements – were incorporated into the Fair Work Act, which was also being developed throughout the period of the negotiations. This created a space for unions to negotiate other family provisions – namely, paid maternity leave. Unions no longer needed to bargain for the test case provisions, and attention increasingly focused on campaigning for paid maternity leave (ACTU, undated).

Secondly, the paid maternity leave policy development and campaign made the issue so high profile that including this provision in a claim became almost a standard universal bargaining claim. Government policy and the associated debate and campaign acted as a catalyst for this item to be negotiated. As Dickens (1998) has noted, the social policy environment is an external factor which can assist equality bargaining, as appeared to have been the case here. Paid maternity leave was firmly on the national, as well as enterprise bargaining agendas. Paid maternity/parental leave was so topical at the time of the negotiations under study, and had been such a major social issue for some years, that unions would have appeared to be remiss if this was not included in their bargaining agendas, as stated by the lead negotiator for the LHMU. This was quite different to the previous years, when paid maternity leave was barely included in unions’ bargaining agendas or successfully negotiated, as
evidenced by the low number of collective agreements which contained paid maternity leave until 2006 (as discussed in Chapter Four).

c) Paid parental leave as an inhibitive factor

The Productivity Commission parental leave inquiry was also an inhibitive factor for equality bargaining in three of the case studies. Both the SDA Secretary and the NSW Nurses’ Association negotiators realised that a government paid parental leave scheme could replace the need to bargain for paid maternity/paternal leave. The phenomena of government action replacing bargaining has been noted by Gregory and Milner, who found that French unions lacked commitment to pursuing work/life balance policies as they saw them being the responsibility of the State (2009, 124). Similarly, Swinton also argued that unions may not pursue bargaining for paid maternity leave where it was already regulated by statute (1996, 728).

The SDA Secretary was therefore satisfied to wait for the government scheme for employees to receive paid parental leave. Similarly, the NSW Nurses’ Association negotiators noted that the management representatives may have preferred to wait until the outcomes of a government scheme were known, instead of introducing their own scheme. These negotiators though, sought to potentially build on any government scheme, by negotiating a clause so that negotiations could be reopened once any government action was known.

In some respects this was an intended effect of the Australian government introducing a national paid parental leave scheme, as researchers and unions had argued that bargaining was only delivering paid maternity leave in a very piecemeal manner (see Baird et al 2009; ACTU, 2008; Baird 2005). However, instead of using the negotiations as an opportunity to build on the government’s paid parental leave scheme, as the NSW Nurses’ Association may achieve, the SDA Secretary was content for the government provided scheme to be the only avenue to deliver paid maternity leave.

iii) State of the economy

The state of the economy was the third national level factor which impacted on the forms of equality bargaining undertaken which inhibited equality bargaining. At the
commencement of the negotiations for four of the case studies, the Australian economy was buoyant and there was a staff shortage for nurses and some public servants. This may have given unions some leverage in bargaining for family provisions, for the organisations to attract and retain employees. The employers did adopt and act upon business case arguments: the nursing employers did not want to lose nursing staff to the public sector and so agreed to increased provisions to retain employees. The SecurityInc management did not need union prompting and voluntarily introduced paid parental leave in order to attract and retain employees.

Negotiations for the fifth case study however, between RetailCo and the SDA occurred when Australia was entering an economic downturn as a result of the Global Financial Crisis (GFC). The GFC compounded the effects of the declining profits in RetailCo which had arisen as a result of the previous business strategy and together, these dual factors prevented the introduction of paid maternity leave and so the SDA negotiators did not pursue their paid maternity leave claim. A narrow form of equality bargaining occurred, with the union negotiators securing other family provisions. Less costly family provisions were increased, so that employees gained additional carer’s leave and some other minor family provisions, such as compassionate leave being able to be taken on the death of a niece or nephew.

This bargaining outcome supports two of Dickens’ findings. Firstly, it reiterates that even when employers are not willing or able to grant some equality provisions, they may instead be amenable to engaging in bargaining for improvements in low cost working conditions (Dickens, 1998, 18). Secondly, that equality provisions are more favoured in times of prosperity, and are less supported in times of recession (1998, 18). It needs to be noted that other factors also contributed to the success or otherwise of the equality bargaining being undertaken, however, it is clear that the economic environment did influence the case study negotiations.

9.3.2 Industry level regulation and equality bargaining

This section identifies factors at the industry level which facilitated or inhibited equality bargaining. There is a great deal of intertwining and overlap between the factors at each of the regulatory levels, however, it is possible to discern strong industry level factors from the cases which had a discrete and identifiable impact on
the case study negotiations. Two factors are discussed in this section – business case reasons and the use of benchmarking.

i) The ‘business case’

As discussed in Chapter Two, employers tend to use human resource policies to introduce equal opportunities and unions use collective bargaining. Some of the case studies show the interaction between the two forms of regulation. Specifically, employers can also use the same arguments in collective bargaining for equal opportunities as is used when implementing equality initiatives through HR policy. The SecurityInc managers introduced paid maternity leave because of a mix of business case reasons and social and gender justice reasons, because it ‘was the right thing to do’, which also related to the organisation wanting to be an ‘employer of choice’ to attract and retain staff. This organisation also valued being a leader in this area, and, according to the union, also desired to be seen as a good corporate citizen. These are typically the reasons employers use when introducing or increasing equality initiatives through human resource practices – here however, they were used in collective bargaining for an equal opportunity. Unions can also appropriate the language of HR to secure family provisions through bargaining. Indeed, this occurred in the negotiations between the NSW Nurses’ Association and the private hospital managers, where the union negotiators used attraction and retention arguments to convince the managers of the need for including paid parental leave in the collective agreement.

Human resource arguments, however, do have limitations. In particular, researchers have acknowledged the shortcomings of the business case, including that such arguments are likely to not have resonance in a recessionary climate (Dickens, 1998, 18; Colling, 1997, 28; 35). This was the case in the negotiations between the SDA and RetailCo. While the union Secretary spoke of wanting to obtain paid maternity leave for retail employees as it would benefit current and future generations of employees, the bargaining was conducted in an economic downturn. This ultimately resulted in the paid maternity leave claim being removed from the union’s claim, as discussed earlier.
ii) Industry benchmarks

As well as highlighting links between HR policy, collective bargaining and the business case, the SDA/RetailCo negotiations show the link between HR policy, collective bargaining and benchmarking. As discussed in Chapter Eight, a succession of large retailers had introduced paid maternity leave through HR policy. The union negotiators then attempted to use the benchmarks which other employers had established when negotiating for the introduction of paid parental leave in RetailCo. This was not successful however, and the employer used a different benchmark, that one of their competitors had not introduced paid parental leave, as a reason why they should also not introduce this provision. This contributed to paid maternity leave being withdrawn from the claim.

The use of industry benchmarks – of arguing that the particular workplace was lagging behind competitors in the provision of employment conditions – was also evident in other case studies. The CPSU used the current level of paid parental leave in the other major APS agencies as an argument for increased leave. This argument was successful and the employer agreed to this condition without undue pressure being applied, even though the union members engaged in collective action for another family provision. The wider APS served as a benchmark for the PublicOrg negotiations.

Similarly, the public health system served as a benchmark for nurses in the private health system and three arguments relating to benchmarking were used by the union negotiators. Firstly, the NSW Nurses’ Association negotiators wanted to achieve parity with the public sector, although they were not successful in increasing the level of paid maternity leave to that in the public hospital system. The second was to move the paid maternity leave provisions from HR policy into a collective agreement. This would not only ensure that the provisions were enforceable but would also contribute to standardisation across the industry, raising the benchmark. Thirdly, from many workplaces having their differing levels of paid parental leave, having one common amount in the agreement would increase the level in some workplaces, as well as contribute to establishing a common amount across the industry.
The effects of benchmarking, and the creation of community standards was also evidenced in the SecurityInc/LHMMU negotiations. Managers from outside SecurityInc had come from workplaces which did have paid maternity leave, and so acted as a conduit for the introduction of this provision to flow through to SecurityInc. Both the management and union negotiators in the SecurityInc negotiations recognised that paid parental leave was an industry benchmark which should be included in that agreement. These negotiators also recognised paid maternity leave as a community standard, having wider application than just that particular industry.

However, the use of the benchmarking argument does not always guarantee successful equality bargaining. The existence of fourteen weeks paid parental leave in the public health sector was used by the NSW Nurses’ Association as they argued for the same level of paid parental leave to be included in the two agreements they were negotiating. Despite this, the union did not achieve the same as the public sector nurses, partly because the private sector offered other benefits not available in the public sector, such as a less stressful working environment. In the case of HospitalOrg, the union negotiators also misunderstood the corporate aims of the employer, who did not desire to be an industry leader and set benchmarks.

iii) Union leadership

As discussed earlier in this chapter, the ACTU played a pivotal role in the paid parental leave campaign by advocating for the introduction of a scheme, participating in the inquiry and leading affiliated unions on this issue. As this activity was occurring, individual union activity also occurred, at two levels. Firstly, senior union officials of the individual case study unions advocated for the introduction of a national paid parental leave scheme and were engaged in lobbying the government and participating in the Productivity Commission inquiry, by making submissions and participating in the associated hearings.

Secondly, senior union officials were also progressing bargaining for paid parental leave at the enterprise level. The CPSU and NSW Nurses’ Association included paid parental leave in their ‘core’ or industry claim. Similarly and in a less structured way, the LHMMU and SDA also regarded paid maternity leave as an item to be included in all union negotiations at this time, although, like the NSW Nurses’ Association, these
unions did not have a fixed quantum in their claim, despite their stated commitments to six months paid parental leave. Senior union officials in the CPSU and NSW Nurses’ Association then directed individual negotiators to pursue paid parental leave through bargaining.

The use of a ‘core’ or industry claim cannot be underestimated as a tool to achieve equality bargaining. It is worth taking a moment to again consider the CPSU’s use of a core claim, as it was effectively a tool to mainstream gender equality items. The importance of gender mainstreaming in collective bargaining has been emphasised by researchers and organisations as a way of ensuring that all bargaining items are examined for their differential impact on female and male employees, and that negotiations and the resulting agreements are not ‘gender-blind’ (Eironline, 2000; Dickens, 2000b). Mainstreaming can ensure that equality issues are not marginalised, and this can also contribute to modernising collective bargaining so that it fully addresses the needs of female employees and progresses gender equality. The CPSU appears to have taken the first tentative steps towards mainstreaming gender through bargaining, and as a result, modernising collective bargaining.

In the early 2000s, the CPSU held internal discussions about the role of the union, and determined to move away from being just a ‘bargaining agent’ to becoming a more proactive union. This decision resulted in the union’s main elected governing body developing a core claim, which included gender equity items. 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. The core claim formed the basis of all claims, although claims also included bargaining items specific to individual workplaces. The main family provision included an increased paid parental leave claim of fourteen weeks, plus another fourteen weeks for the primary care-giver and strengthened mechanisms to enable employees to take personal/carer’s leave.

Family provisions were mainstreamed in the design of the claim by union members and officials and featured throughout, including for example, in items without an obvious gender element, such as a claim dealing with workplace travel arrangements. Mainstreaming then occurred through the implementation of the core claim, as directed by the union’s governing body and paid leadership, so that all negotiators
were required to include these items in their claims and negotiate these issues. Mainstreaming occurred within the union formally (through the negotiation of the core claim) and also informally (through negotiators communicating with each other). Gender/equality mainstreaming also occurred through the negotiation of the core claim being monitored, as negotiators collected data on bargaining outcomes in a central database.

9.3.3 Organisational level regulation and equality bargaining
The case studies have identified various factors at the organisational level, some of which have been identified in previous research, others which are new. Because there are a number of organisational factors, these have been grouped thematically. Dickens used a similar approach in her consideration of organisational level factors, framing her analysis around employer and union rationales; and internal triggers for action, which are ‘points in time where factors…may predispose the parties to bring equality issues into collective bargaining’ (1998, 31). This section is structured differently however, as the results of this research tend to fall naturally into the organisational level categories relating to ‘people’, ‘process’ and ‘organisational culture’.

i) People-related factors
These factors emanate from the actions of the key protagonists in the negotiations, where leadership, the characteristics, and the beliefs and actions of the negotiators, were prominent in the various forms of equality bargaining undertaken.

a) Leadership
This chapter has already discussed different types of union leadership, including at the national level, emanating from the ACTU, and also emanating from the industry level through both managers and unions engaging in benchmarking, and then the CPSU’s use of a core claim. As discussed in Chapter Seven, the SecurityInc managers also demonstrated leadership not by only initiating a claim to introduce paid maternity leave, but also by working together with the LHMU lead negotiator to progress this issue, against the initial resistance from the union delegates also involved in the negotiations. While this demonstrates a convergence of interest between the main negotiators from both bargaining parties, it also demonstrates a maturity and willingness to work together, hallmarks of good leadership.
As well as being an internal factor for equality bargaining, union leadership was also an inhibitive factor. This is demonstrated by the SDA/RetailCo negotiations and the role of the SDA Secretary. As discussed in Chapter Eight, the Secretary controlled the negotiations, and determined that the paid maternity leave claim should be withdrawn. There were multiple reasons for this withdrawal, as discussed in this chapter, mainly relating to the GFC and the finances of the organisation, and the expected government provision of paid maternity leave. Yet the fact remains that the union Secretary unilaterally prevented paid maternity leave being negotiated and included in the collective workplace agreement. The decision was undertaken by fiat and with little – if any – consultation with the other negotiators, and no consultation with the members. As also discussed in Chapter Seven, the union Secretary performed the role of gate-keeper for the negotiation of family provisions.

b) **Characteristics of negotiators**

Researchers have found that equality items are more likely to be bargained successfully when women are included in the negotiations (Karamessini, 1997; Alemany, 1997; Colling, 1997). Gregory and Milner found that increased numbers of female negotiators resulted in increased discussions on work and family issues in negotiations (2009, 138). In contrast, Heery (2006c) found that the experience level of the negotiators had more influence on negotiation outcomes than did sex.

Supporting Heery’s findings, in all the negotiations, the main union negotiators were all very experienced and successfully negotiated for improved family provisions (apart from the SDA case, as discussed). All the union negotiators – male as well as female – were aware of the importance of family provisions, and also negotiated in accordance with their union’s policy of bargaining for paid maternity/parental leave. The case studies for this research find that the sex of the negotiators did not, in itself, contribute to successful equality bargaining, but that awareness of gender issues and the experience of negotiators was a more influential factor. The LHMU/SecurityInc negotiations even showed that the presence of female negotiators can actually inhibit equality bargaining, as some of the female union delegates were opposed to the introduction of paid parental leave. This is further discussed below.
c) Majoritarianism

As explained in Chapter Two, researchers have identified majoritarianism as being an inhibitive factor for equality bargaining (Wever, 2003; Blackett and Shepherd, 2003). Majoritarianism occurs when issues of particular relevance to a ‘minority’ group of employees, such as women of childbearing age – are sacrificed to the interests of the majority of members. Nevertheless, researchers have considered to a lesser degree that majoritarianism can also be further perpetuated by female negotiators.

Blackett and Shepherd state that ‘if workers from disadvantaged groups are chosen to participate in collective bargaining, this will help reduce the risk of the needs and concerns of minority groups becoming marginalised during the collective bargaining process’ (2003, 436). However, as the LHMU/SecurityInc case study shows, women do not necessarily support or negotiate for gender equality provisions. Assuming women will do so is ‘essentialist’, by ascribing characteristics to female negotiators because of their sex. Briskin warns against such assumptions, as there are no reasons why female negotiators would prioritise equality bargaining issues (2006, 45). This diversity of interests was represented in the LHMU/SecurityInc case study, where the female workplace union delegates vigorously opposed the introduction of paid maternity leave and one in particular argued for stress leave days instead. Such union members can be seen to be representative of other members of the community, as similar sentiments have also been expressed in the media (see for example, Fynes-Clinton, 2009).

The cases also highlight a significant point about majoritarianism, and one which has not been found in other research. The cases show that majoritarianism can emanate from different sources. In the LHMU/SecurityInc negotiations, some of the union delegate negotiators were opposed to the introduction of paid maternity leave; in the SDA/RetailCo negotiations, it was the union Secretary who was initially in favour of the provision, but then removed it from the claim, for reasons described above. These different approaches stemmed from different sources and impacted on the negotiations differently. The SecurityInc negotiators appeared to be uneducated about the importance of the provision, as the LHMU lead negotiator acknowledged. The SDA Secretary, however, was fully knowledgeable and supportive of paid maternity
leave, but considered it of lesser importance than an increased wages claim, which could be funded in part by the removal of the paid maternity leave claim.

These different responses suggest that different avenues of action are necessary to overcome majoritarianism. The union negotiators’ resistance could possibly be overcome with education, although individual expressions of discrimination against women and employees with family responsibilities is representative of systemic discrimination. But as the LHMU official noted, these negotiators also needed to be educated about the nature of bargaining, so even if they personally did not support paid maternity leave, they could effectively represent those members who did, which, arguably, did not occur in this case study. The form of majoritarianism displayed by the SDA Secretary would require a different remedy however – that of internal equality within the union, so that an equality item would not be traded off. The centralised union power vested in one senior male may need to be overcome by a core of senior female union officials involved in the negotiations, although this may not make a significant difference and generational change may be a more viable solution.

**ii) Process-related factors**

The case studies have highlighted three process-related factors which impacted on the equality bargaining undertaken. These are: firstly, claim development and the priority given to equality issues; secondly, the level of union member involvement in the negotiations; and thirdly, the impact of union campaigns.

**a) Prioritising family provisions in claim development**

Researchers have identified that the negotiation of equality bargaining items is likely to be successful when given a high priority (Kumar and Murray, 2002, 20; Heery, 2006c). These case studies confirm this finding. Paid maternity leave was a major bargaining item for the CPSU, where the governing membership body and paid union leadership ensured that paid parental leave was included in the core claim and negotiated. Similarly, paid parental leave was a high priority for the SecurityInc managers and the LHMU lead negotiator and was successfully negotiated. This provision was also an industry claim in the NSW Nurses’ Association, a priority for the negotiators and successfully negotiated. In the case where it was a low priority, the SDA negotiations, it was traded off for a wages increase.


b) Organising for collective action and campaigning

The LHMU, CPSU and NSW Nurses’ Association closely followed the ACTU model of organising, which focuses on union activity and organisation at the workplace, in comparison with the ‘servicing’ model of unionism, where union activities occur outside the workplace and union officials provide ‘services’ to members (Hanley and Holland, 2003, 4). Both the CPSU and the NSW Nurses’ Association had a very high level of union member involvement, with the CPSU in particular issuing a constant stream of bulletins, surveying members, and continually visiting workplaces. The NSW Nurses’ Association and the LHMU also issued bulletins and visited workplaces, with the Nurses’ Association allocating more time and resources than the LHMU, as the private hospital negotiations were much more comprehensive. The fourth union, the SDA, had a very circumscribed role for union members and delegates, with the union Secretary explaining the unfeasibility of effectively organising 180 workplaces with 26,000 employees. The Secretary did believe however, that the SDA had adopted the organising model to suit the union’s needs, but that this may not have aligned with the ACTU organising model.

Both the CPSU and the NSW Nurses’ Association campaigned against the employer’s position and in support of their own, and used pressure tactics to achieve their goals. Adoption of the organising model was essential for the CPSU to increase member activity and to be able to call on members to take industrial action to demonstrate opposition to the employer’s proposal to reduce personal/carers’ leave. As detailed in Chapter Five, CPSU members engaged in a range of low-key, yet effective activities to highlight their opposition. This was successful and the management negotiators subsequently revised their position. Collective action in this workplace was new, and this campaign was seen as something of a milestone by the organisers. With PublicOrg, power was vested within the membership, harnessed by the union, and members ultimately engaged in collective action to prevent a diminution of a family provision.

With the NSW Nurses’ Association/HospitalOrg negotiations, action was also necessary to resolve a deadlock in bargaining. The union officials, backed by a delegates’ committee, commenced a negative publicity campaign against the employer by effectively using the union’s in-house publications to embarrass the
employer. Members were aware of this and were prepared to engage in collective action, however, negotiations recommenced and further action was unnecessary. With the SDA, member involvement was low and paid maternity leave was withdrawn from negotiations at the union secretary’s discretion – members did not have an opportunity to decide on this or take action to support this claim. These instances suggest that whoever holds union power – be it the Secretary or union members – ultimately decides the fate of equality items. These case studies demonstrate a complex interplay between union membership power and union leadership in bargaining for family provisions.

**iii) Organisational culture factors**

The culture of the organisation for which the collective agreement was being negotiated influenced the outcomes. This culture was displayed where the union and management negotiators had bargaining interests which converged, based on a mutual understanding of what was beneficial for the organisation. The other cultural factor stems from the relationship between the bargaining parties, which can be a manifestation of the way in which managers view dealing with unions.

* a) *Convergence of interests*

As other researchers have found (Alemany 1997; Colling 1997), some of the case studies demonstrate that a convergence of interests between the bargaining parties can lead to successful equality bargaining. In the PublicOrg/CPSU negotiations, both bargaining parties supported the introduction of paid paternity leave. The employer wanted to improve employees’ work and family balance as part of a strategy to modernise the organisation and increase performance and attendance; the union wanted the provision for equity reasons as well as to maintain and eventually lift the benchmark in the APS.

Similarly, a convergence was evident in the SecurityInc negotiations, where again, both parties were desirous of increasing paid maternity leave; for altruistic reasons as well as business reasons on the part of the employer and increased provisions for current and future members on behalf of the union. Even where paid maternity leave was not increased, in the RetailCo/SDA negotiations, a convergence of other interests could still be discerned, as both parties recognised the benefits of rewarding long-term
employees by increasing the carer’s leave provisions. Both parties also responded to
the recessionary climate in the same way and increased this entitlement. Further, this
convergence of interests can occur within both a high and low trust environment. The
CPSU negotiations were characterised by a low trust environment; the SecurityInc
negotiations were high trust. Even though the bargaining parties’ underlying reasons
may have differed, both parties were aware of the benefits and worked together in
these respective cases.

b) Lack of information and education
The cases have also identified factors which can prevent a convergence of interests.
Firstly, as demonstrated by the NSW Nurses’ Association/HealthCo negotiations,
both union and management negotiators were not aware of the level of paid maternity
leave in the various workplaces, due to the private hospitals establishing their own
provisions and then being acquired by HealthCo. A form of equality bargaining
proceeded without this basic information, however it did inhibit the negotiations.
Being able to access complete information is a necessary precursor for equality
bargaining. Secondly, the bargaining parties misunderstanding the others’ aims can
also inhibit convergence. This was demonstrated in the NSW Nurses’ Association
PrivateHealth negotiations, where the union did not fully understand that the
employer did not want to be an industry leader.

Members being insufficiently educated can also result in non-convergence of
interests. This occurred in the SecurityInc negotiations, where there was a
convergence of interests between the main union and management negotiators, but not
between the lead union negotiator and the delegate negotiators. The LHMU negotiator
noted that the union should have educated members more, not only about the need for
paid parental leave, but also about how to bargain for multiple issues over time, as
well as simultaneously, so that negotiating for one item does not preclude negotiating
for another. Briskin has highlighted that equality provisions may be gained only after
many rounds of negotiations have been undertaken (2006, 43), a point not understood
by the LHMU delegates. The members’ lack of education did not result in the non-
introduction of paid maternity leave, due to union leadership and the lead union and
management negotiators working together, but the bargaining outcomes may have
been very different with a lead union negotiator less committed to introducing paid parental leave.

c) Bargaining relationships

As discussed in Chapter Two, researchers have suggested that integrative bargaining (Cutcher-Gershenfeld, 2003, 143) or mutual gains bargaining (Gregory and Milner, 2009, 142) may facilitate bargaining for family provisions. Similarly, Dickens found that equality bargaining is more likely to occur in a ‘high trust, social partnership orientation within an organisation rather than an adversarial style of negotiations’ (2000b, 202). Additionally, Gregory and Milner cite the UK Trades Union Congress, whose research found that a partnership approach between management and unions is necessary to achieve a work/life balance, including through bargaining (2009, 138-140).

There was only one case study in this research which could be considered to be a high trust relationship, based on mutual gains, and that was between the LHMU and SecurityInc. The high trust relationship was first demonstrated when the employer provided the claim and met with the lead union negotiator prior to negotiations, which allowed an informal exchange of information to occur and positions to be explored. Negotiations commenced, and as discussed in Chapter Seven, both bargaining parties verbalised reciprocal trust. These negotiators also worked together to develop the paid maternity leave claim (in opposition to the LHMU delegates); agreed to develop a joint working party should a process of change management be required; and also presented the final negotiated interim workplace agreement to the employees. These are all elements of an integrative, high trust relationship. This relationship indirectly contributed to equality bargaining with the introduction of paid maternity leave; however, this provision was not introduced as a result of the parties working together, rather, it was instigated by the employer, and built upon by the lead union negotiator.

These case studies, which cover a range of public and private sector industries, and which demonstrate a wide variety of union structures and approaches to bargaining, show that while a bargaining relationship based on trust may ease the process of equality bargaining, it does not automatically lead to improved family provisions. The CPSU/PublicOrg and NSW Nurses’ Association/PrivateHealth negotiations - where
collective action and negative campaigning was used – also demonstrate that an adversarial approach to bargaining can lead to successful equality bargaining. This finding however, has also been suggested by researchers focusing on traditional forms of bargaining. Cutcher-Gershenfeld found a positive correlation between increases in benefits where both unions and management negotiators used more traditional bargaining based on ‘power-bargaining’ rather than on bargaining based on mutual gains (2001, 18). The CPSU/PublicOrg and NSW Nurses’ Association/HospitalOrg cases reinforce this, finding that unions gained increased or improved family provisions when an adversarial bargaining approach was adopted.

An adversarial approach can, however, also inhibit equality bargaining. The LHMU delegates’ hostility and posturing during the SecurityInc negotiations directly impacted on the equality bargaining being conducted as they did not support the paid maternity leave claim proposed by the employer. This behaviour arose as the union negotiators were inexperienced and had also not received adequate training on both how to conduct negotiations, and the importance of paid maternity leave. This behaviour was countered by the more experienced union and management negotiators, who then jointly progressed negotiations.

9.3.4 Identifying new facilitative and inhibitive factors for equality bargaining

In summary, research conducted for this thesis has identified a range of new facilitative and inhibitive factors which impact on equality bargaining. Facilitative factors at the national level include the impact of the industrial relations framework, specifically the impacts of decentralisation in mobilising union members to support bargaining for family provisions and to take industrial action. At the industry level, this research identifies the use of a core claim as a new facilitative factor for equality bargaining. There are also a range of business case reasons which have not been explicitly identified in previous research which have contributed to equality bargaining, including the use of benchmarks to standardise entitlements and for entitlements to be moved from HR policy and included in an agreement so that they are enforceable. At the organisational level, the research for this thesis also newly identifies the use of industrial action as a facilitative factor for equality bargaining. Similarly, the effectiveness of union organising and campaigning for equality bargaining has not been highlighted in other research.
The new inhibitive factors identified in this research include the social policy environment. While previous research has identified that the national social policy environment can be a facilitative factor for equality bargaining, it has not identified that it can also be inhibitive, as was the paid parental leave inquiry and campaign. At the industry level, the use of benchmarking has also found to be inhibitive where an organisation does not want to be an industry leader. At the organisational level, previous research has also identified that union leadership is necessary for equality bargaining, but this thesis shows that particular deficiencies in leadership – such as not educating members about bargaining tactics and bargaining for family provisions – can be an inhibitive factor. Strong, centralised union leadership has also been shown to prevent successful equality bargaining.

9.4 Progressing from the narrowest equality bargaining to transformational equality bargaining

As has been shown in this chapter and throughout this thesis, a narrow and symbolic form of equality bargaining was undertaken by most of the case study unions, with one union making tentative inroads into transformational equality bargaining. Paid parental/maternity leave was included in negotiations in all the case studies (although not to the completion of negotiations in one case study), but this arose because of a conjunction of factors at a particular point in time. Unions and women’s organisations had been conducting a campaign for the past thirty years for paid maternity leave, which had escalated dramatically since 2002, with the release of the Human Rights and Equal Opportunity Commission’s report outlining a national paid parental leave scheme (see Chapter Four). A new Labor government was elected in 2007 and there was an expectation that the government would implement a scheme, which would complement the other new entitlements being introduced in the Fair Work Act. As discussed, paid maternity leave was a relatively easy item for unions to negotiate in this climate, however, was very dependent on the opportunity structure presented. This particular convergence of factors may not occur again in Australia’s industrial relations and social policy arenas.

The questions which arise from this research are: how can unions move from a narrow form of equality bargaining, which may be merely symbolic of a commitment to negotiating for gender equality issues and achieving gender equality, to a
transformational form of equality bargaining to achieve substantive equality? Transformational equality bargaining would require including a wide range of equality bargaining issues in bargaining agendas and negotiating these, to achieve equality for a diverse range of population groups, including women, indigenous, transgender, gay and lesbians, employees from culturally and linguistically diverse backgrounds, and employees with disabilities. Innovative provisions for gender equality would be included, such as a domestic violence leave clause. All the other claims would also have been subject to a gender and broader equality analysis. How could such a detailed bargaining agenda be developed and negotiated?

These questions have been partially answered in Chapter Two and centre on ‘modernising’ collective bargaining. Researchers have recommended a range of remedies, including training negotiators about equality issues and conducting anti-discrimination programs (Kravaritou, 1997), producing equality manuals and establishing equity officers in unions (Eironline, 2000), and increasing internal equality structures within unions, including increasing the number of senior female union officials (Wever, 2003; Kumar and Gregory, 2002).

Wider union engagement with community groups to form alliances to progress change has also been suggested (Bergamaschi, 1999; Briskin, 2006). This recommendation has particular resonance in an Australian context, with the recent history of community alliance building which contributed to the defeat of a government which had introduced the unpopular Work Choices. Unions, women’s and community organisations – and even business leaders – also joined forces to advocate for a paid maternity leave scheme, which did contribute to a scheme being introduced.

These are all valid suggestions to move unions further along the equality bargaining continuum. The other practical suggestion to achieve this has been demonstrated by the CPSU, in its mainstreaming equality throughout the union by using a core claim. This appears to be fundamental to successful equality bargaining. Union commitment, and union leadership at the most senior levels is essential to ensure union-wide commitment, and that negotiating the core claim can be mainstreamed throughout the union. As one of the LHMIU negotiators noted, however, a core claim is more difficult to implement in a union which covers a diversity of industries, and hence easier to
negotiate across the public sector. The presence of equality officers could assist to overcome these difficulties, which also need to be supported by union members in a solid structure with enhanced member involvement, commitment and education. All these initiatives however, are dependent on strong union leadership committed to pursuing gender equality through collective bargaining.

9.5 Conclusion

This chapter has synthesised the findings from the case studies and made two major contributions. The first is a new tool to understand equality bargaining – a continuum of equality bargaining. The chapter reviewed the main definitions of equality bargaining and linked these to the case study findings. This led this researcher to conclude that a form of equality bargaining had occurred in the case studies, to differing degrees, thereby demonstrating a continuum of equality bargaining. The case studies showed that most of the equality bargaining which occurred was narrow in scope and symbolic, but that equality bargaining is emerging. The bargaining activities of the CPSU in particular, straddled both the broad and transformational types of equality bargaining, demonstrating movement along the continuum. This progression is made possible when facilitative factors for equality bargaining come into play and negotiations are not unduly hindered by inhibitive factors.

The second major contribution of this thesis is the identification of new factors which facilitate and inhibit equality bargaining. The chapter highlighted that a unique convergence of national factors (especially around paid maternity leave) combined with strong union leadership resulted in equality bargaining emerged in these Australian cases. While it is unlikely that such momentous national changes will all again converge soon to so strongly influence collective bargaining behaviours, this chapter has also documented the smaller, organisational steps which unions are taking to implement equality bargaining.
Chapter Ten

Conclusions and Way Forward

10.1 Introduction

Significant changes in the Australian industrial relations system and in the provision and regulation of minimum entitlements enabling employees to balance work and family responsibilities have occurred in Australia in recent years. In 2005, the AIRC granted a suite of unpaid parental leave entitlements in the Family Provisions test case to federal award-covered employees. In 2006, Work Choices largely prevented further awards from being varied to include the new provisions. The Fair Work Act 2009 then included most of the test case provisions, or a variant thereof. Simultaneously, a major inquiry was being conducted into the introduction of a paid parental leave scheme for Australia, raising expectations that this provision would be nationally legislated.

Throughout this period, unions, community and women’s organisations were active in campaigning against Work Choices, and then for paid maternity leave. In these turbulent and rapidly changing times, collective bargaining at the enterprise and workplace levels remained important to secure new and increased family provisions for employees. As detailed throughout this thesis and reiterated in Chapter Nine, the main research questions this thesis sought to answer were: firstly; would unions negotiate for family provisions in a changing industrial relations and social policy environment? Secondly, if so, did this constitute equality bargaining? Thirdly, how did unions ensure family provisions were included on bargaining agendas and negotiated? Fourthly, what were the facilitative or inhibitive factors which impacted on the equality bargaining undertaken?

In response to the first question, the case studies showed that the four unions did negotiate for family provisions, particularly paid parental/maternity leave, as will be further discussed in this chapter. In response to the second question, the case study negotiations did constitute equality bargaining. It most cases it was a narrow form which was also symbolic – it was a symbol of a commitment to gender equality, but did not progress towards making real changes within the workplace to achieve substantive gender equality. This is also further discussed in this chapter. Finally and
in response to the third research question, the case studies also revealed a range of factors which facilitated or inhibited equality bargaining, some of which are new, others which reinforce earlier research. This final chapter briefly summarises the chapters and the case study findings, discusses the ongoing need for research into equality bargaining and possible ways forward.

10.2 Thesis overview

Part One provided the background and contextual information to the research. Chapter One introduced the concept of equality bargaining and outlined the research questions and the need for this research. Chapter Two reviewed the literature on collective bargaining for equal opportunities, commencing with an examination of how traditional bargaining theories had not considered issues relating to gender or equality. The chapter then detailed the rise of equality bargaining research in the mid-1990s and 2000s. This research primarily considered how collective bargaining could be used to achieve equality for women. The main research on equality bargaining was conducted by the European Foundation for the Improvement of Living and Working Conditions, which co-ordinated case study research on equality bargaining in fifteen European countries. The final report arising from this research (Dickens, 1998) provides a detailed analysis of equality bargaining, and provided a baseline for the research conducted for this thesis. Further research in the mid-2000s (Heery, 2006; Briskin, 2006) significantly added both empirical and theoretical insights to this important area.

Chapter Three detailed the methodology used. This was case studies based on interviews with negotiators from before the commencement of the negotiations, throughout the process to when the collective agreement was approved. Chapter Four provided the context and background to the case studies, detailing how family provisions have been provided in Australia and the recent industrial and social policy changes impacting on negotiating family provisions.

Part Two of this thesis presented the five cases. These cases provide a fascinating insight into the world of bargaining, especially into how family provisions and paid maternity leave have been negotiated in Australia, against a background of major industrial relations and social policy changes. These cases highlight the array of
bargaining tactics and strategies used by the unions, in both public and private sector negotiations.

The different types of equality bargaining undertaken and the different bargaining strategies used, reveal that the case study unions and bargaining environments were more different than similar. As discussed in Chapter Three, three or more cases increase the ‘confidence in the generalisability of the results’ (Hakim, 2000, 62). Undertaking five case studies therefore enables generalisations to be made on the factors which facilitate or inhibit equality bargaining, but at the same time, the five cases show the wide variety of bargaining strategies, union behaviour, occupational and industry differences, responses to national industrial relations and public policy development and ultimately, the different bargaining outcomes.

Part Three of the thesis presented a discussion of the findings of the case studies. These findings show that equality bargaining occurs in a variety of ways and a continuum of equality bargaining was presented to model the range of outcomes. At one end of the continuum is a narrow form of equality bargaining, which is based on Heery’s definition of ‘bending the bargaining agenda to serve the needs of women workers’ (2006b, 5252). In the middle of the continuum is a broader form of equality bargaining, based on Colling and Dickens’ research (1998), who had previously developed a multi-pronged definition of equality bargaining. Their definition relied on regulatory actors undertaking an increasingly complex and indepth range of actions to achieve gender equality through bargaining, culminating in undertaking actions which would eliminate structural discrimination against women in the workforce. Still further along the continuum is ‘transformational’ equality bargaining, a form of equality bargaining which includes requiring that parties bargain for a range of innovative provisions to secure gender equality, as well as for a range of other equal opportunity population groups, such as older workers. The continuum of equality bargaining allows us to see the level of sophistication of the equality bargaining undertaken by the case study unions. It also shows how equality bargaining can progress from narrow through to broad to transformational.
10.3 Findings

Four significant findings arise from this research. First, at this stage in Australia, narrow or symbolic equality bargaining is more common than broader or transformational bargaining. Despite the fact that a range of family provisions could have been negotiated, parental/maternity leave dominated four of the five case studies, due to this being such a high profile issue at the time of the negotiations. In the fifth case study, carer’s leave dominated, due to a particular organisational requirement. Additionally, PublicOrg employees were already entitled to a relatively high level of paid parental leave, making this item a lower bargaining priority for these negotiations. In all of the case studies, union negotiators included paid maternity leave in their claim and then negotiated this provision, except for one case where this claim was withdrawn by the union. Paid maternity leave was the only equality or family provision in three of the five case studies, suggesting that unions’ engagement with equality bargaining was largely symbolic, bending the agenda just a little to include a topic that had prominence and was such a topical issue, that union claims for this entitlement were not unexpected.

Nevertheless, although only a narrow form of equality bargaining was undertaken, the result indicates that equality bargaining is occurring. As shown in Chapter Four, paid maternity leave was not a widespread bargaining item even a few years ago, and so the inclusion of this provision in all the bargaining claims indicates that unions do realise the importance of negotiating this provision. One of the case study unions has even made inroads into implementing transformational equality bargaining by negotiating a range of equality items, including for other groups apart from female employees. These case studies indicate then, that equality bargaining is emerging although is still often symbolic and narrow rather than transformational.

Second, the external environment has a profound impact on equality bargaining. In these Australian case studies, equality bargaining did not happen in isolation. The wider economic, industrial relations and related social policy all had a significant impact. The main external factor which impacted on all the case study negotiations was the paid parental leave inquiry conducted by the Productivity Commission at the time of the negotiations, and the associated campaign conducted by unions and community groups. This external environment provided the unions with an
opportunity to negotiate paid maternity leave, reinforcing earlier research on equality bargaining which also found that the wider social and legal environments can provide an environment for equality bargaining to flourish. Other external factors included the economic environment, particularly the economic recession, which inhibited bargaining for paid parental leave in one case, and the legislative environment. The changes arising from Work Choices required unions to restructure and to increase member involvement, which also indirectly impacted on the negotiations.

Third, industry and organisational level factors, particularly the use of a common or ‘core’ claim, strong union leadership, and an adversarial as well as a high trust bargaining relationship, are critical for equality bargaining. While some of these factors have been identified in previous research, the cases contribute new knowledge to this area. The use of a ‘core’ claim for an industry, developed by union members and used throughout all negotiations has been shown to be an effective way to progress equality bargaining. The development of a core claim is also highly dependent on a union leadership committed to negotiating for family provisions and gender equality items. As well as union leadership at the national level to engage in campaigns and undertake advocacy in test cases, senior union leadership is also essential to progress internal equality within a union so that female union officials are included in collective bargaining at all levels.

This research has also identified an organisational level factor, which is that an adversarial relationship between union and management negotiators can contribute to successful equality bargaining. This was demonstrated in the CPSU/PublicOrg negotiations, where members engaged in collective action to prevent a reduction to their personal/carer’s leave entitlements. Researchers had already noted that a high trust bargaining relationship between the parties can result in equality bargaining, and as discussed, this occurred in the LHMU/SecurityInc negotiations. But the case studies show that the relationship does not have to be one of high trust, however any collective action undertaken needs to be reinforced with strong support from union members.

Fourth, the research identified inhibitive factors for equality bargaining. Two main inhibitive factors were identified. One was the external context, in this case, the paid
parental leave scheme, as possible government action on this front resulted in a union negotiator withdrawing the paid maternity claim on the expectation that the government would deliver this provision. Another union was also cognisant that the employer may have been resistant to introducing paid parental leave because of possible government action in this area. The paid parental leave inquiry and campaign can therefore be seen as both a facilitative and inhibitive factor, as shown in Chapter Nine. The second inhibitive factor was majoritarianism – where items of benefit to women are traded off for items to benefit the whole workforce. Within this, two types of majoritarianism were identified. The first emanated from union delegates who were opposed to the introduction of paid maternity leave and the second was from a union Secretary who unilaterally decided to remove paid maternity leave from the union’s bargaining claim and hence from the negotiations.

10.4 Areas for further research

The parameters of this research were firmly guided by the research and theories emanating from equality bargaining. There is scope however, to combine traditional bargaining theories with equality bargaining. Combining traditional bargaining and equality bargaining theories would aid a better understanding of equality bargaining and would build on the work of the few researchers who have applied traditional bargaining theories to union bargaining and campaigning for equal opportunities, such as Gregory and Milner (2009) and Rigby and O’Brien (2010). Such research would also engender traditional bargaining theories, to fully explain how items relevant to women are included in bargaining agendas and negotiated and which types of bargaining – integrative, distributive, or mutual gains for example – facilitate or inhibit equality bargaining. Incorporating gender equality into traditional bargaining theories could progress this essential industrial relations theory to ensure that it was no longer gender-blind.

On a more empirical level, future research could be based on broader data than that used for this research, from different participants, especially employers. While the research conducted for this thesis was wide-ranging, covering different industries and occupations and utilising a wealth of data, this research relied mostly on information and data provided by union negotiators. As it is unions who generally instigate negotiating for a collective workplace agreement and then progress bargaining for
equality items, using union negotiators as the primary source was appropriate. The interviews undertaken with the managers for this research, however, were also very insightful, and added another perspective to understanding the negotiating process. More involvement from managers/employers would therefore provide additional information and another dimension to the research. Of course, access to employers is often a problem in research of this nature, and this limitation was noted in Chapter Three, the methodology chapter.

Future research could also examine the practices contained within a broader definition of equality bargaining. This has two aspects. The first is undertaking similar research to that conducted for this thesis, but examining a wider range of issues. This thesis has focused on researching equality bargaining for family provisions, as this is most relevant at this particular time in Australia’s industrial relations landscape. However, bargaining for other non-traditional items would also be useful to generate a deeper level of understanding. This could include researching how domestic violence leave or pay equity provisions are negotiated, or other emerging work and family issues, such as eldercare, or provisions specifically for other equal opportunity population groups, such as mature-aged or Indigenous employees.

The second area of future research could involve monitoring the implementation of the negotiated agreement to assess whether, and how, gender equality was being progressed (as suggested by Dickens, 1998). Such an assessment could not only involve monitoring employees’ utilisation of the new provisions, but could also examine female employees’ involvement in the implementation and monitoring of the agreement.

As detailed in Chapter Four, there are also a range of other drivers which make research into, and an understanding of, equality bargaining essential in Australia. The ACTU has stated that unions will bargain for provisions currently not contained in the new paid parental leave legislation, including employer-provided superannuation for employees who are on parental leave and a requirement that employers ‘top-up’ the minimum wage level payment to replacement wage level. The ACTU and affiliated unions have also committed to bargaining for improved carer’s leave provisions (ACTU, 2009, 2-3), so that employees can manage elder care more easily. Also as
discussed in Chapter Four, awards have been subject to a process of award modernisation, which has meant that some conditions have been removed. While key family provisions do not appear to have been abolished, unions have been assessing the impact of award modernisation, including for groups of female employees. Unions may need to undertake a form of equality bargaining to restore reduced wages or lost or lowered provisions for employees. The area of ‘equality bargaining’ is one where ongoing research is needed.

10.5 Conclusion
Based on the evidence presented in this thesis, most of the case study union negotiators engaged in a narrow form of equality bargaining, focussing on a key and symbolic condition for female employees – paid maternity leave. Three of the four case study unions demonstrated a limited understanding of the need for equality bargaining, but all of the unions have shown that a form of equality bargaining is being undertaken, although union negotiators do not use that term. Equality bargaining is a vital area not only to ensure that unions fully represent the needs of their members and secure relevant provisions, but also to ease the strains of working life for both male and female employees. The unions featured in this thesis have started to move in this direction, demonstrating that even while equality bargaining is currently narrow and symbolic, it is also emerging as a highly relevant approach for collective bargaining.
Appendix 3.1: Questions for Interviewees

Pre-bargaining

Background information

- Provide an overview of the organisation (workplace or union).
- Provide an overview of the staffing or profile of union membership in the organisation. Where are female union members/staff located occupationally?
- What is the structure of the union?
- Are there women in the union’s leadership?
- What is the financial position of the employer?
- What activities has the union historically been engaged in to progress equality for female employees? Has the union been involved in the paid maternity leave campaign?
- What type of work do male and female employees do?
- Which instruments contain family provisions?
- What family provisions are in the current agreement?
- What are the industry standards of family provisions?
- Outline the history of bargaining and the relationship with the other party (union or employer).
- For what will they be bargaining? What are the main claims?
- What does the union/employer hope to gain through these negotiations?
- What are the aims of the organisation eg to retain employees, be an employer of choice? Or to cut costs, minimise union involvement?
- What do you think the other party will want to achieve? What do you think will be the minimum and the maximum they will accept?
- What is the party’s bottom line? What is the lowest they will accept?
- Have employees engaged in industrial action previously?

Developing the claim

- How does the union develop the claim? What processes are involved?
- How much are union members, including women, involvement in claim development?
• Does the influence of existing regulation for example, ACTU policy, existing standards or the Productivity Commission inquiry into paid parental leave impact on claim development?
• Do unions consider equality issues when developing the claim?
• What priority was given to family provisions in the development of the claim?
• Do the bargaining team and members understand the importance of bargaining for issues specifically for female employees? Is this explained to members?
• What research was undertaken to develop the claim?

Choosing bargaining teams
• Who will be undertaking the negotiations?
• How are members of the bargaining team selected? Is there a concerted effort to include women?
• What are the respective roles of the negotiating team members?
• What are the levels of experience and expertise?
• Do union members in the negotiating team support family provisions?

General Bargaining Questions
• How are the negotiations progressing? Provide an update.
• Has there been movement on your, or the other parties’ claims?
• What arguments are used in support of your claim?
• What arguments are used to discredit the other party’s claim?
• What arguments are used to win over employees?
• When/why were family provisions taken off the bargaining agenda (if applicable)? At whose initiative? How was this communicated to the other party? What is their response?
• Do parties caucus between themselves? How are internal disputes resolved?
• What is the role of different negotiators?
• What is the involvement of members?
• At what points are trade-offs made?
• How do the dynamics of bargaining between negotiators impact on bargaining for family provisions?
• What behaviours are displayed during bargaining?
• What committees are established during negotiations? How is the composition of these determined? What role do women have?
• Do any negotiations occur outside of the formal negotiations?

**Distributive bargaining**

• How many items are in the claim?
• Is the other side seeking trade-offs? If so, what are these?
• Are union members willing to strike?
• Has the union or the management surveyed employees?
• Does management consult with line managers to gauge how strongly employees feel about issues? Does management consult with employees?
• Were any informal conferences held with the other party?
• What questions did the parties ask about the claims and underlying rationales? Were these directed to any of the less-experienced negotiators?
• Was there any personal abuse or aggression?
• Did other party show impatience or indicate that the bargaining was coming to an end?
• What were the non-verbal behaviours?
• Was a third party or a more senior negotiator involved in the negotiations?
• Is a person-to-person approach used in bargaining?
• Is there one spokesperson or more than one?
• Is the other party inscrutable?
• Do they say and interact much?
• Is colourful language used?
• Do the negotiators have the authority to make decisions?
• How well informed are the parties?
• Has management introduced positive demands of its own? When was this presented to the union?
• Does the party know the costs of their proposals? Do they share this with the other party?
• Do parties have a fixed position?
• How are the proposals framed? What reasoning is used for that position?
• Are there implied threats? Does management try and convince the union that their claim is unreasonable?
• Is there consistency of behaviours and positions between sessions?
• Does one party invite a higher official from the other side?
• Is there direct communication between the major stakeholders of the other party?
• Do the negotiators search for someone on the other side who may be more favourable to their position?
• Does one side threaten to go to AIRC/Fair Work Australia?
• Does one side make demands for lots of meetings, lots of work to be conducted in short space of time?
• Does timing play a part eg need to be concluded before Christmas?
• What campaigning activities does the union engage in? Do women participate more than men?
• Does one party believe that the information will be used as intended, and not for some other purpose?
• Is any industrial or collective action taken?
• What will management do/how far will they go to avoid a strike?
• Is the union be willing to strike?
• Does either party believe that the other is engaging in bargaining tactics? If so, what are these?

**Integrative bargaining**

• What information do parties give each other? How often does this occur – is there an exchange of information?
• How much information is gathered by both parties?
• Do parties explore options together? How many options are explored? Is the process innovative and creative?
• Do the parties engage in comparisons of solutions?
• Are both parties motivated to find a solution?
• Is the climate one of trust and support?
• Do parties encourage each other? Is there a free-flow of information and spontaneity?
• Are negotiations frequent?
• How is the agenda stated? Are issues raised in terms of problems experienced or proposed solutions?
• Do parties communicate informally and explore issues in an exploratory way?
• Are joint study groups set up?
• What item is bargained first? One with integrative potential? Are there any elements of conflict in this item?
• If a solution isn’t found immediately, is it temporarily laid aside? Are other approaches taken to find a solution?
• Is everything tentative until everything is agreed?
• Are there time pressures to finalise bargaining?
• Do the parties explore a wide range of ideas, then evaluate them?
• Do parties re-evaluate their positions? Do parties accurately report their preferences?
• What indirect assessment techniques are used ie pre-negotiation conferences, content analysis of grievances, opinion surveys.
• Can the issue be broken down into parts and these looked at separately?
• Are parties motivated to solve the problem?
• Are innovative solutions proposed? Do negotiators see interrelationships between alternatives and goals?
• Is the bargaining committee large?
• How much do committee members participate? Do women participate equally? How much are members allowed to say?
• What levels are the negotiators?
• Are technical specialists used? Is a third party used?
• Are joint subcommittees set up?
• How did the negotiations proceed?

Follow Up Questions

• Recap the course of the negotiations, highlighting turning points.
• Clarify any outstanding issues.
• Is the party satisfied with the outcomes?
• What would the party have done differently?
• What worked in these negotiations?
• What contributed to increased family provisions (if applicable?)
• What factors militated against increased family provisions (if applicable?)
• How has this impacted on the party’s relationship with the other party?
• Final comments?
### Appendix 3.2: Research Activity Timeline

<table>
<thead>
<tr>
<th>Date</th>
<th>Details</th>
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<tbody>
<tr>
<td>2/3/07</td>
<td>Meeting with ACTU staff</td>
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<tr>
<td>13/9/07</td>
<td>Interview with CPSU lead negotiator</td>
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<tr>
<td>19/10/07</td>
<td>Scoping interview with senior official from Finance Sector Union</td>
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<tr>
<td>22/10/07</td>
<td>Scoping interview with LHMU lead negotiator</td>
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<tr>
<td>24/10/07</td>
<td>Scoping interview with industrial officer from Finance Sector Union</td>
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<tr>
<td>3/3/08</td>
<td>Interview with senior CPSU official</td>
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<tr>
<td>10/3/08</td>
<td>Unions NSW Women’s Conference – informal discussions with women from Rail, Tram and Bus Union and National Tertiary education Union</td>
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<tr>
<td>28-30/3/08</td>
<td>Observer at CPSU Governing Council and associated ‘Women’s Breakfast’</td>
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<tr>
<td>4/4/08</td>
<td>Further scoping interview with industrial officer from Finance Sector Union</td>
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<tr>
<td>11/4/08</td>
<td>Interview with CPSU lead organiser and lead negotiator (jointly)</td>
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<tr>
<td>11/4/08</td>
<td>Scoping interview with LHMU lead negotiator</td>
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<tr>
<td>11/6/08</td>
<td>Interview with CPSU lead negotiator</td>
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<tr>
<td>12/6/08</td>
<td>Interview with CPSU lead organiser</td>
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<tr>
<td>12/6/08</td>
<td>Attended ACTU Women’s Committee meeting; presented overview of research; sought participants</td>
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<td>24/6/08</td>
<td>Interview with CPSU lead negotiator</td>
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<tr>
<td>27/6/08</td>
<td>Scoping interviews with NSW Nurses’ Association officials</td>
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<tr>
<td>7/7/08</td>
<td>Interview with CPSU lead organiser</td>
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<td>Interview with CPSU lead negotiator</td>
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<td>7/7/08</td>
<td>Interview with two CPSU delegates (jointly)</td>
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<td>14/7/08</td>
<td>Interview with two CPSU delegates (jointly)</td>
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<tr>
<td>15/7/08</td>
<td>Interview with CPSU delegate</td>
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<td>Interview with CPSU lead negotiator</td>
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<td>24/7/08</td>
<td>Interview with LHMU lead negotiator</td>
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<td>Observed SecurityInc/LHMU bargaining</td>
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<td>30/7/08</td>
<td>Interview with CPSU delegate</td>
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<td>1/8/08</td>
<td>Interview with CPSU lead organiser</td>
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<td>1/8/08</td>
<td>Interview with CPSU lead negotiator</td>
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<tr>
<td>5/8/08</td>
<td>Interview with SecurityInc negotiator</td>
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<td>8/8/08</td>
<td>Interview with senior CPSU official</td>
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<td>25/8/08</td>
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<td>26/8/08</td>
<td>Interview with CPSU lead negotiator</td>
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<td>1/9/08</td>
<td>Observed LHMU/GSL delegates’ teleconference</td>
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<td>Interview with LHMU lead negotiator</td>
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<td>5/9/08</td>
<td>Interview with LHMU organiser</td>
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<td>8/9/08</td>
<td>Interview with SDA Secretary and two SDA Officials (jointly)</td>
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<td>12/9/08</td>
<td>Interview with CPSU lead organiser</td>
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<td>19/9/08</td>
<td>Interview with two NSW Nurses negotiators (jointly)</td>
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<td>23/9/08</td>
<td>Interview with CPSU lead organiser and lead negotiator</td>
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<td>Interview with Publicorg delegate</td>
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<td>Interview with CPSU lead negotiator and lead organiser</td>
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<td>18/11/08</td>
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<td>Interview with two NSW Nurses’ Association negotiators (jointly)</td>
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<td>Interview with SDA Secretary</td>
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<td>Interview with two NSW Nurses’ Association negotiators (jointly)</td>
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<td>Interview with LHMU official</td>
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<td>Interview with two NSW Nurses’ Association negotiators (jointly)</td>
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<td>13/2/09</td>
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<td>17/2/09</td>
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<td>Interview with NSW Nurses’ Association negotiator</td>
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</table>
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