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evidence from Australia, Canada, Denmark and France**

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Understanding the dynamics of inequity in collective bargaining: Evidence from Australia, Canada, Denmark and France

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Summary: Unions and collective bargaining are generally considered the main vehicles for ensuring equity at work. This paper questions this assertion by examining distinct forms of inequity between workers in unionised workplaces and, more specifically, the role of collective bargaining in creating, maintaining, reducing or avoiding them. Based on a study conducted in Australia, Canada (Québec), Denmark and France, the situations of inequity examined relate to employment and working conditions and favour one group of workers over another group of workers performing the same tasks in the same workplace. To better apprehend these dynamics and distinguish between different situations, we develop an analytical framework capturing these. Then, we focus on one example observable in each country: two examples of inequity based on the date of hiring (Canada and Australia) and two based on employment status (France and Denmark), showing how the four ideal-type processes interact in each national context. Based on the analysis of these examples, we demonstrate the segmentation between core and non-core employees as in segmentation theory but also within groups of insiders or core employees and the key factors to understand how the collective bargaining process can lead to inequity: time, balance of power, and workplace institutions.

Key words: collective bargaining; equity; industrial relations; inequity; union; international study; segmentation

Trade unions and collective bargaining are generally considered the main vehicles for ensuring equity in the workplace. Nevertheless, decentralised bargaining can favour inequity (Garnero, 2020; Doellgast et al. 2018). The impetus for this study was the observation that collective bargaining can be associated with inequity between workers, with some groups of workers required to show greater flexibility, facing greater precariousness and economic insecurity, and enjoying union protection to a lesser degree than others. Equity and inequity refer here to a state of fairness or unfairness of treatment between workers in the employment relationship including equitable minimum labour standards, fair work rewards and a balanced distribution of income, non-discrimination policies and protection against unjust dismissal (Budd, 2004: 20). It represents a major issue in the field of industrial relations (IR) which has historically focused on equity and equitable outcomes and processes in the workplace. Inequity encompasses but goes beyond discrimination based on individual characteristics such as gender, age, or ethnicity which has been the focus of many studies on equality and inequality. The presence of inequity in unionised settings may be a sign that unions and collective bargaining are no longer fulfilling their responsibility as instruments of social justice, protecting workers and promoting equity. To document this issue, we examine the role of collective bargaining in creating, maintaining, reducing or avoiding inequities in unionised workplaces through a study conducted in four countries with contrasting institutional and geographical settings: Australia, Canada¹, Denmark and France.

Research problem and conceptual model

Our study contributes to the labour market segmentation theory, insider-outsider theory and institutional dualism by examining the links between collective bargaining and inequities. According to this literature, the labor market is divided into two segments: the core/primary segment in which jobs are stable and the secondary/periphery market, in which jobs are insecure and less well remunerated – ie. the outsiders (Doeringer and Piore, 1971). Although these analytical approaches share the notion of a segmented labour market, the mechanisms fostering the labour market divide differ profoundly, including the role of collective bargaining and unions. Much segmentation literature considers collective bargaining and strong union presence as instrumental to limit labour market discrimination and inequalities by restraining employers' ability to gain flexibility and cost-curb through segmenting the labour force (Meardi et al., 2019; Rubery, 2015). The insider-outsider theory assumes that collective bargaining, including trade unions, forms a barrier that prevent certain groups from entering the primary or core market as regulatory protection mainly favour insiders and thus implicitly contributes to inequalities (Meardi et al. 2019; Lindbeck and Snower, 1989). Institutional dualism is more ambiguous and argues that the very same regulatory framework, such as collective bargaining institutions, both produce and counteract labour market inequalities, where unions often resort to protect insiders especially in times of crisis (Emmenegger et al. 2012; Palier and Thelen, 2010). These strands of literature help us to understand how the increase in flexibility contributes to segmenting labour's working conditions not only between "outsiders" and "insiders" but also within the primary market and create inequalities vis-à-vis these "outsiders on the

¹ For reasons given later in the paper, it made more sense to use the example of the Canadian province of Québec since, strictly speaking, there is no such thing as a unified "Canadian" IR system.

inside” i.e. between insiders themselves (Laroche et al., 2019). We explore how the collective bargaining process can become inequitable by justifying unfair differences of treatment which lead to inequity.

To contribute to this discussion, we put forward a perspective that goes beyond the usual approach which implicitly assumes that national and sector bargaining institutions are more important than workplace institutions when dealing with labour market inequalities. We thus add another layer to the growing body of literature on income or wage inequality, by exploring how distinct workplace bargaining institutions contribute to shaping labour market inequalities in order to capture the dynamics and institutional variations across countries, sectors and workplaces. In line with much segmentation literature, we include any difference in treatment – relating to employment and working conditions – that favours one group of workers over another group of workers performing the same tasks. Concretely, core workers (permanent, full-time, with social benefits, etc.) often work side-by-side with peripheral workers (part-time, temporary, employees of subcontractors, etc.) or newly hired core workers with less advantageous wages, benefits and other working conditions. Such analyses on inequity in the treatment between different groups of employees are indeed pivotal with the locus of collective bargaining shifting as the decentralisation process unfolds. This involves increased latitude for negotiating and derogations from sectoral agreements or statutory law at company level, and thus allows for greater discrepancies in terms of wage and working conditions among distinct employee groups (Marginson, 2014; Polavieja, 2006). Unions and employers’ approaches towards dealing with labour market inequalities are often ambivalent and their responses tend to differ across countries, sectors, workplaces, employee groups and have also slightly shifted over time (Heery 2009; Doellgast et al. 2018). Research examining social partners joint responses in Denmark (Larsen and Mailand, 2018), France (Simms et al., 2018), Australia (Markey and McIvor, 2018) and Canada (Gomez and Lamb, 2019) indicates there has been a shift from trying to overlook or exclude the interests of non full-time permanent employees, towards acknowledging, organising, and jointly pushing to regulate the conditions of these groups through collective bargaining or statutory law in order to limit discrimination and avoid unfair competition with full-time permanent employees.

To better apprehend these dynamics and analytically distinguish between different situations, we developed an analytical framework capturing all situations. We propose a matrix comprised of four ideal-type processes (see Figure 1).

Figure 1. Collective Bargaining and Inequity in the Workplace: Four Ideal-Type Processes

<i>Workplace starting point</i>	Groups of employees with <i>similar</i> employment and working conditions = HOMOGENEITY	Groups of employees with <i>different</i> employment and working conditions = SEGMENTATION
<i>Collective bargaining used to...</i>	Keep the employment and working conditions unsegmented or undifferentiated → AVOIDING INEQUITY (4)	Reduce differences in employment and working conditions → REDUCING INEQUITY (3)
	Differentiate or segment employment and working conditions → CREATING INEQUITY (1)	Acknowledge or justify differences in employment and working conditions → MAINTAINING INEQUITY (2)

We assume that these four processes – inequity being avoided, reduced, created or maintained – refer to different starting points, result from different dynamics and are distinct but non-mutually exclusive. In this sense, the role that collective bargaining plays in these processes is likely to differ from one situation to another. Two typical starting points are distinguished: initially, employees either enjoy *similar* employment and working conditions or experience *different* ones.

In the first process, the initial situation is one of *homogeneity*, and collective bargaining is used to differentiate employment and working conditions, thus segmenting the workforce. This first process thus involves *creating* inequity in the workplace (1). An increased decentralisation of collective bargaining, especially if combined with an uneven position and strength of unions and employers at the shop floor allow for greater discrepancies in terms of wage levels and working conditions (Bosch and Lehndorff, 2017). Organized and coordinated bargaining systems like the Danish display lower wage inequality and types of non-standard work compared to fully decentralised bargaining systems exemplified by Canada, while Australia and France characterised by centralized and rather uncoordinated bargaining (France) or largely decentralised collective bargaining (Australia) are classified as somewhat in between (Garnero, 2020). Collective bargaining can also succeed in preventing segmentation between groups of workers and thus contributes to *avoiding* inequity (4). For example, centralized wage bargaining structures and the introduction of a statutory minimum wage have lifted the conditions of those at the very bottom of the labor market and thus contributed to limiting, if not in some instances hindered inequity (Rubery, 2015). The legislative limitation of certain forms of two-tier provisions in Québec has also helped unions to avoid some of these inequities (Laroche et al., 2019).

In other processes, it is the initial situation rather than the resulting one that is characterised by *segmentation*. Collective bargaining can be used in two ways. First, collective agreements can acknowledge that groups of workers are subject to different treatments thus contributing to *maintaining* inequity in the workplace (2). Research along this line suggests that local social partners may choose a different approach towards outsiders than their sector organisations and through workplace bargaining sharpen inequalities by primarily securing wage increases, further training for insiders or accept atypical work as a buffer against dismissals (Lindbeck and Snower, 1989; Oliver and Morelock, 2020). Abstaining from adjusting collective agreements to the changing workplace circumstances also contributes to maintaining inequity (Emmenegger et al., 2012: 11).

Second, collective bargaining can be used to reduce the differences in treatment between these groups, thus participating in *reducing* inequity (3) in the workplace. Inclusive bargaining strategies by both sides of industry involving novel means such as legal extension of collective agreements, statutory minimum wages, labour clauses, certification schemes and campaigns to tackle downward pressures on wages and unfair competition have been pursued by employers and unions at different bargaining levels in countries with both weak and strong traditions for collective bargaining (Trygstad et al., 2018; Doellgast et al., 2018; Benassi and Dorigatti, 2018).

Method

To understand the influence of institutions and collective bargaining processes on inequity in the workplace, we chose to investigate in four countries with different IR systems. Australia and Denmark represent two different pathways to the decentralisation of IR. As company-level bargaining rises in the two countries, the case of manufacturing shows for instance that Danish “agreement-based decentralisation seems to offer better process conditions for reproduction of local partnership compared to decentralisation regulated by law”, as seen in Australia (Ilsøe, Pekarek, and Fells, 2018). We decided to add two countries to the study along this voluntaristic vs legalistic line, choosing a second non-European country and a second EU country. Québec is an example of a voluntaristic IR system, with a traditionally high degree of decentralisation, low level of coordination and a very limited sectoral bargaining and extension regime. It could be considered as an outlier in this group since single-employer bargaining at the establishment level dominates (Laroche and Jalette, 2016). On the contrary, France is characterised by a legalistic system in which the State plays a central role, particularly in the current decentralisation process that challenges traditional multi-employer bargaining at the sector level (Béthoux and Laroche, 2021). Moreover France stands out as having the lowest global union density rate in the four countries, combined with a diverse competing union structure. The union structure is diverse and competing in Québec as well, but the union density rate is 38%, while Australia and Denmark share a diverse cooperating union structure, in spite of contrasting union density rates with approximately 15% in Australia, and almost 63% in Denmark. Although Denmark and France are both labelled as “coordinated market economies”, as opposed to “liberal market economies” such as Australia and Canada, they are considered as contrasted

cases in the European context itself: Denmark illustrates the “Nordic model” of trade unionism and IR; France the “Southern” model (Gumbrell-Mc Cormick and Hyman, 2014).

Australia, Québec, Denmark and France are also relevant to study as they present varied configurations regarding equity at work. According to Kim et al., (2015: 646), the Australian and Canadian IR systems favour effectiveness over equity whereas the Danish system gives equal importance to both criteria, and the French system gives moderate priority to equity and low priority to effectiveness. It is with these similarities and differences regarding IR institutions in mind, that these countries were purposefully selected to explore the influence of these factors on inequity in the workplace. The main concerns regarding the data collection was to contextualize how the inequity issue was broadly understood in each national context. Documentary analysis, focus groups and interviews with union and management representatives were deployed aiming to identify a workplace-level type of inequity that was seen as predominant or as mostly debated in each national case: the inequities meeting these criteria were based on the hiring date (Australia and Québec) or the worker status (Denmark and France). Each team was in charge of the data collection in their country and chose the methods best suited to their context. For instance, since the type of inequity observed in Québec is “institutionalised” (in collective agreements and law) and well-known by practitioners, it made more sense to explore this issue with people from different sectors to have a more representative and aggregated view of the trends in the workplaces. In Australia, it was more appropriate to focus at the company level given the absence of public data and the parties difficulty in discussing the inequity issue. In France, as the issue was most debated in some particular sectors, the focus was at the sectoral level and meeting the representative unions in these sectors and then shifting to company cases. In Denmark, the increased latitude for company based bargaining tends to hamper efforts to address inequity through sectoral bargaining, which is why company cases were used and the focus then shifted to the sectoral level. This approach helped us to better understand in their context the examples of inequity and the associated collective bargaining dynamics. A total of 110 persons were interviewed individually or in focus groups in the four countries at different periods in time².

Illustrative examples

Based on the analytical framework developed above, each national example scrutinizes the role of collective bargaining in creating, maintaining, reducing or avoiding this inequity, showing how the four ideal-type processes interact in each national context. The emphasis and perspective may vary slightly depending on the example as we wanted to choose the most appropriate methods according to the national context.

Québec example: two-tier provisions

In Canada, the responsibility for IR is shared among the federal, provincial and territorial governments: each jurisdiction has its own autonomous system. Consequently, there is no unified “Canadian” IR system. We thus chose to focus on the situation in Québec whose IR system, as in the other jurisdictions in Canada,

² 16 in Australia (2015-2018); 19 in Québec (2018-2020); 56 in Denmark (2016-2019); 19 in France (2018-2020).

is mainly based on the 1935 US *Wagner Act*, adopting many of its principles regarding grassroots union recognition, union monopoly of representation and decentralised collective bargaining. The *Labour Code* specifies that union recognition and collective bargaining occur at the establishment level. Collective bargaining leads to a collective agreement that applies to the bargaining unit at the establishment level. The object of the negotiation or negotiable field is vast and only constrained by the condition that the collective agreement must not contain provisions contrary to public order or the law (Laroche and Jalette, 2016).

It is the exercise (or possible abuse) of this freedom to bargain – the parties are free to include in their agreement any measure on which they mutually agree – that may have led to the appearance of two-tier wage or compensation provisions which almost all our interviewees referred to. A two-tier provision or, as it is called in Québec, a difference in treatment (*disparité de traitement*), grants temporarily or permanently an employee, solely on the basis of their hiring date, a less advantageous working condition than that which is granted to other employees performing the same tasks in the same establishment. While the most classic type of two-tier provision concerns wages, it can also involve other conditions related to compensation (e.g., fringe benefits such as a complementary insurance or pension plan) or job security (e.g., duration of the probationary period). As demonstrated by the nature of and presence of these provisions in about 15% of collective agreements in Québec (Laroche et al., 2019), this example is located in the Box 1 corresponding to the situation where collective bargaining creates a difference of treatment within a group of workers that were initially homogeneous.

How did labour and management come to agree on a two-tier provision in a relatively significant portion of the local collective agreements in force? Our fieldwork was conducted among experienced professional negotiators who bargained regularly at the establishment level. It revealed that these provisions were proposed by management during negotiations and aimed at reducing costs and increasing flexibility in compensation or job security, in response to competition and economic uncertainty at the sectoral or company level. Employers chose this specific way of restructuring the compensation structure because, in not affecting current employees, it caused the least turmoil. As one consultant who regularly negotiates for employers at the local level states: “A union [in which] 90% of the workers [have] 20 years of seniority, they would never accept a cut for the whole group. [...] Why would they care about someone they don't even know, who hasn't even been hired yet?” (Employers 2, 2018).

At the national level, unions were clearly against (Box 4) these two-tier provisions, which cause major disruption in the application of the equity principle and create discrimination among union members. In practice, however, some local unions agreed to them (Box 1). A study of more than 5,000 collective agreements negotiated at the establishment level observed that a balance of power in favour of the employer rendered some unions unable to avoid these provisions, which they unescapably accepted, often along with other concessions (Laroche et al., 2019). As identified by our respondents, one of the great difficulties for unions in mobilising support to fight these provisions is the lack of solidarity between current members and those yet to be hired. Since the former are not willing to go on strike for people they do not know, and the latter are not present in union meetings to defend their own interests, the union's capacity to reduce or avoid such inequity is fairly weak. “[...] it is not just a question of power, because we

could have all the strength in the world, but if there is no united will to put an end to the disparities already established or even to refuse those that are proposed [...] you will not put an end to differences in treatment, you will not prevent them from happening” (Unions 3, 2018). In fact, some senior employees argued it was equitable to maintain differentiated treatment for new employees since they had also once had to endure such inequity and felt that everyone had to “pay their dues” (Unions 4, 2019). In this example, the dynamics appear to be clearly oriented toward the creation and maintenance of inequity (Boxes 1 and 2).

Even after the Government of Québec in 1999 prohibited two-tier provisions with a permanent effect on a limited number of working conditions, those with temporary effects and those not prohibited continued to be created and maintained by the parties in local collective agreements. That caused the government to once again intervene in 2018 to extend the ban to cover these and other items. However, these new prohibitions do not apply to disparities negotiated before the ban came into force, which are still included in collective agreements. Thus, while satisfied with the extension of the ban, at the national level unions continue to lobby politically for the ability to renegotiate, and thus reduce or eliminate disparities conceded in the past at the establishment level. Employers are vehemently opposed to this, given the significant costs involved, particularly for complementary pension plans. In sum, in this example, it is not so much the effectiveness of collective bargaining (although 85% of collective agreements do not include such provisions) as the legal constraints, introduced as a result of this institution’s inability to prevent the introduction and perpetuation of such provisions, that may explain their future reduction and eventual disappearance.

Australian example: two-tier provisions

In 1993 *Industrial Relations Reform Act* saw collective bargaining move from the industry to the enterprise level and non-union bargaining established as an alternative to union bargaining (Peetz, 2018). Thus, the Australian IR system has moved from a centralised to a decentralised system, currently governed by the *Fair Work Act 2009*, which operates at three levels. Underpinning the system at the first level is a guaranteed safety net comprising 10 minimum terms and conditions (minimum wages, types of employment, etc.). At the second level, are 122 “modern awards,” covering all workers in a given industry or occupation (minimum pay and employment conditions for workers not covered by an enterprise agreement or unable to negotiate an acceptable individual contract). At the third level is the collective agreement process, initiated by the employer or union and resulting in either a union or non-union agreement. The Act’s aims include providing workplace relations laws that are fair to working Australians, are flexible for business, promote productivity and economic growth and achieve productivity and fairness through an emphasis on enterprise-level collective bargaining, underpinned by simple good faith bargaining obligations and clear rules governing industrial action. Negotiations can only commence and industrial action be taken once the previous agreement has expired. Bargaining must be undertaken in good faith and can only concern matters that directly pertain to the employment relationship. The Act does not impose any limitations on inequity but does establish that an agreement cannot discriminate against employees on a number of grounds, such as race, gender, disability, religion, family or career responsibilities. An agreement is established when a majority of employees, regardless of whether they

are union members, vote to approve it (Walpole, 2015). This means that, as long as the agreement pertains to the employment relationship, does not discriminate and is accepted by a majority of employees, inequities can occur.

Prior to the 2014-2015 collective bargaining negotiations between the American multinational company, Simplot, and the Australian Manufacturing Workers' Union (AMWU) in the North-West Tasmanian vegetable processing industry there had been agreement that redundancy pay should apply equally to all permanent employees. In this sense collective bargaining had created homogenous employment conditions (Figure 1). However during the course of the 2014-2015 bargaining negotiations, the union and management agreed to introduce an inequity, in the form of a two-tier provision for redundancy pay. In short, this provision states that permanent employees hired before 1 December 2014 are entitled to four weeks' pay as well as an additional four weeks' pay for each year of service, while for those hired after this date these payments are capped at 52 weeks. While this provision is unusual in the Australian manufacturing sector, there are similarities to those observed in Québec.

In the 2014-2015 negotiations, Simplot's Australian subsidiary sought to reduce escalating labour costs and improve plant viability and profitability against a background of constant internal benchmarking and competition between plants. In addition to these two-tier redundancy payments, the company aggressively sought to decentralise the collective bargaining process by moving from one enterprise agreement to four separate site agreements, and deprive employees of a pay raise during the agreement's first year. Wishing to preserve past gains and maintain a single agreement preserving their collective strength, the union took industrial action. Simplot responded with a media campaign that used farmers and politicians to put pressure on the workers and the union. The union managed to achieve a single agreement and pay increases but, after a year of negotiations, with no pay increases during this time, and under pressure from the company's media and political campaign, it made concessions on redundancy payments, rosters, starting time and shift structures. "They caned us in the media and everywhere we were getting belted ... severely" (Simplot worker, 2018). These changes were voted on and agreed to by a vast majority of employees. "At the end of the day the workforce made the decision ... they [Simplot] wore them down till they'd had enough and they agreed to a lot of things they probably shouldn't have" (Simplot worker, 2018). In this way collective bargaining was used to create inequity (Box 1).

The two-tier provision relating to redundancy payments was seen as a compromise since the company had initially proposed to cap such payments at 52 weeks' pay for all permanent employees. The compromise was the parties agreed to introduce differing conditions between those currently employed and those yet to be employed. Some union members felt the union had managed to avoid the worst by preventing current employees from having their redundancy pay capped and thus being adversely affected by this provision. Others, however, felt that it was a poor decision to accept a provision that only the company wanted, considering it a significant change to the collective agreement. "The company wanted to strip our redundancy back [...] But any new employee that starts is going to get a redundancy capped [...]. I just think that's wrong" (Simplot worker, 2015). Although the union recognised the inherent unfairness of this provision and aimed to eliminate it in later bargaining rounds, limitations on industrial action, collective agreement content, high levels of casualisation and declining union density have made it difficult for unions to advance their claims. Outcomes such as the two-tier redundancy pay provisions are unusual but

appear to be becoming more frequent as employee bargaining power has receded under the “weight of a dying bargaining system” in Australia, and employers have pushed for flexibility and created structures that reduce the need to engage with unions and collective bargaining, thus exacerbating inequity (Bornstein, 2019).

French example: workers in former public firms

The French IR system is characterised by a high degree of juridification and State involvement, a three-tier bargaining system, a strong tradition of multi-unionism and a dual channel of employee representation at the workplace level. Over the past 30 years, the locus of collective bargaining has shifted from the traditional level of industry to that of companies and workplaces. This move is based on the assumption that companies are the most relevant level of social regulation to secure France’s competitiveness in a globalised economic context. Since the early 2000s employers, who were initially wary of developing collective bargaining at company level, have favoured it to introduce greater workplace flexibility. As company-level bargaining gains impetus, the ability of unions and worker representatives to take advantage of this decentralising trend has been questioned (Béthoux and Mias, 2019).

This evolving context affects the way inequities are dealt with at company level. In 1966, the Labour Code set out the “equal pay for equal work” rule – relabelled in 2008 as the “principle of equal treatment” rule. Nevertheless since 2008, from a legal standpoint it has been considered that when a company collective agreement includes or defines unequal treatments, such treatments are considered justified given that the agreement was negotiated and signed by union representatives. A series of court cases have confirmed this interpretation of the role of collective bargaining in justifying inequities at work, progressively extending it to various situations. However, in April 2019, this extension was halted: a *Cour de Cassation*³ decision stated that unequal treatment is not systematically justified simply because a collective agreement exists. The Court referred to European law and EU rights in explaining its decision. Whether or not future court cases will continue to favour the recognition of inequities at work by company collective agreements thus remains under scrutiny.

Fieldwork in France was conducted with these legal and judicial developments in mind. Company agreements containing two-tier provisions, such as those analyzed in the Québec and Australian examples, were rarely mentioned by management and union interviewees. In fact unequal treatment referring to the employees’ hiring date was brought up mainly in the case of (previously) public companies. Hiring date and employment status are related but it is on the latter that the inequity is ultimately based. Employees from these companies traditionally enjoy specific employment and working conditions related to their civil servant status. Meanwhile, some of these companies, having been partially or fully privatised (such as the post office and telecommunication services) or currently undergoing such changes (such as the national railway company), have begun hiring new employees on the basis of a private employment contract. For instance, as of 2020, the railway company will stop hiring employees holding the historical *cheminot* public status. The most frequently mentioned differences between the two categories of employees were pay scales, and to a lesser extent health insurance schemes or days off, as well as pension calculation methods

³ This court stands at the top of French judicial institutions.

(Béthoux and Dupuy, 2019). Thus, the starting point in France is a situation of “segmentation” (Figure 1): the differences do not result from collective bargaining in the first place but from public companies being partially or fully privatised, with the aim of promoting economic competition. Consequently, employees holding the same position can work side-by-side and yet hold different – public versus private – statuses.

In such situations, unions encounter difficulties in dealing with the plurality of statuses. First, the existence of inequities creates tensions between and within groups of employees, all the more so as a generational effect is also at play: public servants are often older than the newly hired employees who are working on private contracts. This makes organising and mobilising employees more complex, as different groups of employees do not share the same interests or views (Simms et al., 2018). Second, in cases such as the railway and post companies, public servants and private employees are not covered by the same rules regarding worker representation on the shopfloor. Unions face difficulties in taking diverging interests into account during collective bargaining rounds with workers being covered by different contracts or collective agreements. In this context, collective bargaining is a mean of dealing with forms of unequal treatment, aiming either at maintaining (Box 2) them by way of agreement or at trying to reduce (Box 3) them. The recourse to collective bargaining intervenes at two levels. First, sectoral collective agreements have been negotiated to take into account the increased diversity of economic and social situations, both between and within companies belonging to the newly defined sector. The 2000 collective agreement for the French telecom sector was a good case in point (Mias, 2010). Twenty years later, the negotiation of a single agreement for the railway sector is currently under way. Company-level agreements are the second option. Unions demand the harmonisation of employees’ conditions by aligning them all with the most advantageous ones (Box 3). In the railway case for instance, specific health benefits have been negotiated for private contract workers to compensate for the better conditions enjoyed by public status employees. Employers’ strategies have varied from case to case depending on the sectoral context. Some have been in favour of harmonising employee conditions, such as in the telecom case but the differences between the statuses, governed by separate rules, does not allow it easily: “The principle is one of equality (between civil servants and private workers) and work has been done to eliminate differences but the civil servant status will always lie above the collective agreement” (HR Manager, 2020).

Danish example: atypical workers

The Danish IR system is characterised by a high degree of voluntarism, with strong traditions of multi-unionism, a two-tier bargaining system, dense networks of union-affiliated workplace representation and limited state intervention in important areas of the employment relationship, such as wage-setting, which is left exclusively up to the social partners (Due and Madsen, 2008). Union density (63% in 2018), collective agreement coverage (82% in 2018) and union-led workplace representation (52% in 2010) are high, but vary considerably across sectors, with the Danish bargaining model being considerably weaker in private services than, for example, in manufacturing. For workers not covered by collective agreements, there are statutory social rights, but these are less generous than the terms set out in most collective agreements.

Since the 1980s, the locus of collective bargaining has shifted: sectoral collective agreements now outline the main framework of collectively agreed labour standards, while the local social partners increasingly

determine the implementation and interpretation of these agreements. The latitude for company bargaining, including deviations from the sectoral agreements, varies across sectors. Such bargaining can only take place if a shop steward is present and there is local consensus in the workplace (Ilsøe, 2012). These sectoral variations combined with the Danish bargaining model, which in principle is built on the notion of employees holding full-time open-ended contracts, have contributed to greater diversity and a higher risk of inequities that are closely linked to employment status (Larsen, 2011).

Our Danish fieldwork was conducted in the manufacturing, meat processing and hotel and restaurant sectors. It considered institutionally embedded diversity and the risk of inequities arising from differing contractual statuses. In Denmark the regulatory framework protects different employee groups, irrespective of their contractual status, but the eligibility criteria for social benefits, bonuses and wage increases are often tied to past employment records and weekly working hours, making it difficult for atypical workers to accrue such rights (Larsen and Mailand, 2018). The institutional set-up for company bargaining also entails that employees' rights for collective representation and company bargaining refer to employer responsibility. In the case of temporary agency workers (TAWs), the employer responsibility lies with the agency while, for subcontracted workers, it lies with the private contractors. Since these workers' employment contract is with the agency or private contractor holding the employer responsibility, they lack rights to participate in and influence bargaining processes at the client company. However in some sectors, such as manufacturing, if the client company is covered by the sectoral agreement, this stipulates that TAWs work under the collective agreed wage and working conditions. By contrast, subcontracted workers often work under very different conditions because, unlike TAWs, they work under the arrangements of the private contractor, even if they work on the client company's premises. Similar to the French example, inequities arising from differing contractual statuses were widely mentioned by the interviewees, but often under the broad heading of atypical work (Figure 1). At first, these differences do not arise from collective bargaining, but from the growth in novel ways of organising work such as outsourcing, and increased use of TAW, subcontracted work and external consultants.

Danish unions and their representatives tend to build their constituency around full-time workers, often excluding or ignoring atypical workers, although their approach has recently changed somewhat (Larsen and Mailand, 2018). This was also seen in our case studies, where TAW and subcontracted workers often are left in representational limbo without rights to institutional representation and tend to work under slightly different conditions than the client company's permanent staff (Box 3): *"In the beginning they (workplace representatives) could not care less about these TAWs as they come and go, but you need to fight the case of TAWs, and many has also done so, but it has not always been like that"* (Local union representative, 2016). In other workplaces, local social partners have a slightly different approach and often ignore or exclude TAW and subcontracted workers (Box 2): *"To avoid conflict, we keep the two groups (permanent staff and subcontracted workers) separate: They [subcontracted workers] have their areas and we have ours. There are always problems when working together."* (Employee representative, 2019).

Through *company* bargaining, the local social partners have used their bargaining position to produce a series of joint initiatives to reduce the emerging risks tied to atypical work (Box 3). Examples involve

lowering eligibility criteria to social benefits, guarantees of permanent position after a certain time as TAW, TAW quotas and local labour clauses in procured work. However, workplace initiatives are not always driven by the desire to protect atypical workers. In some instances, their aim appears to be to secure the position of the permanent staff. Several Danish unions and shop stewards interviewed stressed the imperative of ensuring that labour costs for atypical work remain higher or at least at similar levels as those for permanent staff in order to eliminate unfair competition (“*wage dumpers*”, shop steward, 2016). Our interviews further revealed that differing workplace practices have emerged regarding the collective representation of atypical workers. In some companies, union-affiliated workplace representatives have deliberately decided to exclude TAWs from the local bargaining process by referring to their lack of statutory rights for collective representation, leaving them with no avenue to air their demands or influence the bargaining results (Box 1). In other companies, workplace representatives have applied a more inclusive approach, involving atypical workers in a similar way as other workers when bargaining at company level, often with the aim of preventing downward pressures on wages and working conditions (Box 4). Such findings indicate that the increased latitude for company bargaining has contributed to greater diversity in local practices, even if sectoral social partners have agreed to reduce (Box 3) the emerging risk of inequities tied to atypical work. Some leading sectors, such as manufacturing, expanded their collective agreements to cover atypical workers in the mid 1990s with other bargaining areas starting to follow suit throughout the 2000s (Larsen and Mailand, 2018).

Discussion and conclusion

Our study highlights different forms of inequity and their underlying dynamics in collective bargaining in four countries with contrasting institutional settings unlighting the role of structural and local factors. In Québec and Australia, we studied inequities based on the hiring date, while in France and Denmark they were based on worker status (public servant/private contract; regular worker/atypical worker). However, in all four selected countries, with diverse IR systems, we observed examples involving differences in treatment between two groups of workers working side-by-side, in (but not always for) the same company. Across densely and less densely regulated and coordinated labour markets, we found “pockets of inequity” often institutionally embedded. We also found that inequities in employment and working conditions can co-exist between outsiders and insiders (Denmark) as outlined in much segmentation theory but also within groups of insiders (Australia and Québec), even with different status (France). From our analysis of these examples three key factors emerged: time; balance of power; institutions.

First, time matters. The starting point in our examples (segmentation in France and Denmark; homogeneity in Australia and Québec) proved to be crucial and demonstrated the importance of considering time when examining the development of inequity. The national examples show that, over time, one process may succeed another, depending on the conditions of the moment. For instance, these inequities appear to become over time a kind of a moral issue for the union, whether pressured by its members or by the social or legal context. While the creation of an inequity may initially appear justifiable or inevitable, it may become unacceptable over time, leading to its reduction or even elimination. The Canadian, Australian and Danish examples show that unions have sometimes adopted one strategy, later replacing it with another as inequities arose – albeit sometimes with difficulty mobilising their members as recognised in other research (Heery, 2009; Oliver and Morelock, 2020). As argued in much institutional

dualism theory, these processes are thus not mutually exclusive (Emmengger et al. 2012; Palier and Thelen, 2010). The analytical framework developed based on a review of existing literature – the matrix depicting the four processes of creating, maintaining, reducing or avoiding inequity – demonstrated its usefulness in understanding the dynamics of inequity in collective bargaining over time, taking account the evolution of law, economic and social context, social partners values and members.

Secondly, we show that the dynamics of collective bargaining, and especially the balance of power between unions and employers (private in Australia, Québec and Denmark; public in France and Québec) are crucial to understand the dynamics of inequities at the workplace. The creation of inequity typically starts with employers' demands to segment the workforce through differential treatment which introduces inequities that make hiring easier and cheaper in the name of flexibility and cost containment (Laroche et al. 2019; Rubery, 2015). These inequities, whether imposed by force or accepted by the unions, are justified by the union in different ways: "We had no choice", "We have to focus on current or regular members", "There should be no exceptions, we've all been there", etc. As highlighted in the Australian and Canadian examples, the union's bargaining power can be reduced when workers develop their own narratives justifying these differences of treatment which become self-perpetuating over time, and potentially undermine union's solidarity during rounds of bargaining where the balance of power could have been more favourable to them. The undermining of union's bargaining power, caused by a lack of intra-union (Québec, Australia, Denmark) or inter-union (France) solidarity, or by other causes such as management's strategy or a difficult economic or political context, is a significant factor in explaining these inequities and thus corroborates other research (Doellgast et al. 2018; Lindbeck and Snower, 1989). To increase their bargaining power and prevent these inequities, unions need not only to develop a bargaining strategy but also a representation strategy, as observed in Denmark, that aims at bringing all the benefits associated with unionism to as many workers as possible (Bosch and Lehndorff, 2017).

Third, our research tends to demonstrate that institutions, mainly the legal framework and national IR system, are a key factor to understand the creation or reduction of inequities. One of our contributions is to show that workplace institutions are at least as important, if not more so, than sectoral or national ones when dealing with labour market inequalities. Although higher bargaining levels have attempted to reduce or avoid inequities, their good intentions or inclusive strategies do not always descend to workplaces, especially if decentralisation allows for inequities to be maintained and local social partners to develop their own logics. At the workplace level, the legal framework can prevent the parties from using their freedom to bargain to establish different employment and working conditions for a specific group, as shown in the French and Canadian examples. It is also possible to struggle against inequities when company bargaining is subordinated to external factors, such as sectoral agreements (France and Denmark), the risks of inequities are lower than when external constraints are minimal (Canada and Australia). Our study demonstrates that the decentralisation of collective bargaining at the company-level is a threat to equity if not organized or regulated. Checks and balances of IR systems aimed at preventing these inequities, whether through another level of negotiations or a legal prohibition, should be implemented in order for the institution of collective bargaining to fully fulfil its role. This result complements those who underlines that "inclusive institutions (...) encourage coordinated bargaining and constrain employer's ability to shift work to precarious contracts or employment relationships"

(Doellgast et al., 2018, 10). Bargaining power matters as it increases the employer's ability to pursue a strategy of union concessions but it is not the only factor at play as shown in this research.

Collective bargaining can be seen as a cause of the emergence of these inequities and to have failed to play its role in protecting workers and promoting equity. Thus, our study clearly demonstrates that even in the presence of unions and collective institutions, one should not assume that all workers are treated equitably. However, collective bargaining can also be seen as a solution, preventing and reducing inequitable situations, if certain conditions are met. At the workplace level, some intertwined conditions, such as union bargaining power, solidarity among members, new awareness of the problem, change of narrative or inclusive representation strategy appear to be necessary to turn the tide.

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