



ILO's WORK IN PROGRESS

Domestic workers organize – but can they bargain?

Mapping collective bargaining and other forms of negotiation in the domestic work sector

by Claire Hobden, Technical officer on working conditions and domestic work, INWORK.

Introduction

Throughout labour history, organizing and negotiating with employers has been the primary means of securing decent working conditions for workers. As domestic workers have progressively gained rights in countries around the world, their movement has been questioned on its ability to organize, negotiate – and, through organizing, to ensure that employers will comply with labour standards. The existence of an International Domestic Workers' Federation, with affiliates in 54 countries, is evidence of their capacity to organize. What remains to be seen is whether or not they can and will join the ranks of workers who have fought and won the right to bargain collectively. Indeed, the success of the traditional industrial relations model to secure decent working conditions was contingent on several factors, some of which are not present in the domestic work sector. Does the traditional form of collective negotiation have the same potential to ensure decent working conditions in the sector? Or are there other forms, adapted to the sector that would be more effective in ensuring compliance with standards set through various forms of collective negotiation? The ILO is currently carrying out a study to answer just these questions, the preliminary results of which indicate that, to reach the same objective in domestic work will require not only the right to bargain collectively, but may also entail a reassessment of the source of power of domestic workers that would make such a system effective in ensuring employers comply with the agreements.

Collective bargaining and other forms of collective voice

For trade unions and other forms of collective organization throughout history, collective bargaining agreements and other expressions of collective voice and interests have been essential vehicles for securing decent working conditions for workers.

In traditional industrial relations, the formation of unions and other workers' organizations enabled a balance of power in the employment relationship: the power of the employer to hire, fire and cut workers off from their livelihood was balanced by the power of workers to organize in large number and to withdraw their labour if employers would not satisfactorily comply with their demands. This contentious form of labour relations was tempered somewhat by collective negotiations and agreements, which gave workers and employers the opportunity to voice their collective interests, and come to agreement on specific working conditions such as wages, working time, and other terms

As the ILO implements its strategy on domestic work, collaborating with national constituents and other stakeholders around the world, the Office has identified many policy questions of concern to constituents. In response, the Office has combined efforts to answer these frequently asked questions, drawing from country level experience, empirical research, and knowledge-sharing. The «work in progress» series will showcase the Office's research work in progress on these policy areas.

and conditions of employment. The model also helped to ensure that employers complied with a collective agreement, first because it was a jointly agreed ‘common rule’, and secondly because an organized workforce, with the protection of the law, would strike or adopt other forms of contentious actions to enforce the agreement.

The structure of unions and nature of collective bargaining however, reflect a particular kind of employment relationship, a form of industrial relations, and historical context. The model is contingent on there being a standard employment relationship, for starters, with clearly defined counterparts (workers and employers), and a clear, direct relationship between the two. It is also premised that there is a *group* of workers with mostly common interests on one side, and, on the other side, a single employer at enterprise level or multiple, organized employers at sectoral or national level. For the balance of power to function, the workers had to have an effective means of enforcing compliance, which, most often came in the form of strikes.

Domestic work: an “unorganizable” sector?

Suffice it to say, domestic work departs from the traditional industrial relations model, in several ways. The challenges can be categorized into at least three groups: the social, the legal and the logistical.

On the deepest level, domestic work was never seen as “real” work; societies, including workers and employers, historically and to this day, do not perceive domestic workers as workers, or employers as employers; and the home has not been seen as a workplace, subject to labour laws or labour relations. This has presented social and cultural barriers to organizing: domestic workers must be aware of their position as workers to organize, and employers must see themselves as employers to ensure fair working conditions. Domestic workers and employers also see their relationship not as one of employment necessarily, but certainly as a personal one. The close relationship to employers can sometimes make domestic workers feel that organizing would be a personal affront to their employers. Other domestic workers face a powerful fear of losing their job or, in the case of migrant domestic workers, being forced to leave the country and, in some cases, facing detention. Employers, for their part, do not have the human resources management skills or tools of an enterprise. The employment relationship therefore, while it exists, is not realized in practice in most homes around the world.

The socio-cultural barriers to organizing are also often expressed through lack of legal protections. Domestic workers are often not identified as workers in law, resulting in a *de jure* exclusion from the right to organize and to bargain collectively. Sometimes domestic workers are excluded on the basis that the home is not considered a workplace. On occasion, the employers are also excluded from the right to organize, as they are not defined as profit-making institutions.

Even when laws are in place, the sector must still overcome logistical/practical barriers to organizing: first, the sector is totally decentralized, usually with only one domestic worker working for one, two, or several employers. Building mass organizations of domestic workers is far more time and resource intensive than it is in other sectors. Yet, domestic workers are notoriously short on time, working very long hours, and having the double duty of caring for their own families. Organizing possibilities are even more limited for live-in domestic workers, and for migrant domestic workers in an irregular status whose freedom of movement is limited either *de facto* or *de jure*. Bringing together large groups of domestic workers on a regular basis to form and maintain an organization is therefore often seen as a Sisyphean task.

In addition, domestic workers work for individual employers, who themselves are rarely connected. While employers may converse informally about how to set wages or handle employment disputes, it is rare that they have created any formal structures in which to set common standards.



Domestic work also departs from the standard employment relationship in that the employer of record can vary between the householder, a recruitment or placement agency, and the state, depending on the legislative framework in the country in question, and how the domestic worker is paid. In some cases, domestic workers are placed by agencies, or on government payrolls as a form of welfare to householders in need of home-based services or care. With this variety of actors involved, it becomes necessary to formally identify where the employment relationship lies in order to establish the appropriate bargaining counterpart, an exercise which is not always obvious.

Given these conditions, it is indeed hard to imagine that organizing and collective bargaining would be possible in the sector. Ultimately, the challenge can be described as a logistical obstacle course, through which domestic workers and employers would move from the individual to the collective voice in order to achieve target outcomes (improved working conditions) for a group of domestic workers. A breakdown of the obstacles would include four broad steps:

- 1) form a collective of workers and/or employers;
- 2) collectively within each group decide on certain standards;
- 3) negotiate this standard with the counterpart; and
- 4) ensure that employers comply with the standards set. While cases found so far illustrate clear approaches to the first three of these steps, enforcing compliance in the sector remains the biggest challenge.

The four steps are also contingent on the identification of clear bargaining counterparts. While at the national level, collective bargaining can and has been undertaken by national trade union centres and employers' associations, localized bargaining could be conceivable, based on building blocks, neighbourhoods, or cities. Employers' organizations could be tenant unions, homeowner's associations, parent's associations, or other interest groups. Establishing these bargaining units such that they are fairly representative of a coherent set of interests on both sides remains a puzzle that organizations are attempting to solve in a number of countries.

Underlying these logistical problems however is a question of source of power: if, in traditional industrial relations, employers drew their power from owning the means of production, and workers drew their power from numbers on the factory floor, then where and how can domestic workers find their source of power vis-à-vis employers who, in most economies, can replace a domestic worker rather than negotiate?

Domestic workers (and employers) organize

The near absence of domestic work from labour history books testifies to the fact that domestic workers were not seen as workers in the traditional sense. While today it is increasingly recognized as an important workforce, composed of workers and employers, with unions and organizations in countries around the world, historically, domestic work was considered an “unorganizable” sector. As a result, it has largely evaded both trade unions and collective negotiation in most countries. The lack of a natural collective on either the workers' or employers' side and the nature of the employment relationship and workplace beg the question, how can domestic workers and their employers build collective power, and systems through which to act and bargain collectively? What forms of organization have been developed by domestic workers and their employers to form their collective, representative voices?

Even with the odds stacked against them, domestic workers have successfully organized into trade unions or other forms of organizations in countries around the world. As early as the 1800s, washer women in Atlanta, Georgia (USA) organized to demand fair wages from their employers. Domes-

tic workers in Brazil and Chile formed their organizations in the 1930s, Uruguay in the 1950s, and South Africa in the 1960s. In the 2000s, many of these organizations connected and collaborated to advocate for an international labour standard on the rights of domestic workers, which, as is well known now, culminated in the adoption of ILO Domestic Workers Convention (No. 189), 2011. Building from the momentum and connections made during that period, these organizations came together in 2013 to form the first International Domestic Workers' Federation, which now counts 54 affiliates in nearly as many countries. The largest unions of domestic workers count as many as 20,000 members, which is no small feat for a sector that traditional labour has viewed as “unorganizable”.

While domestic workers have formed their own organizations in many countries, organizations or associations of employers of domestic workers are even further and fewer between. The earliest initiatives uncovered so far are found in France, where the *Fédération des particuliers employeurs* (FEPEM) was founded in 1948, followed by the *Syndicat des Particuliers Employeurs* in the 1970s. Italy as well saw the formation of an association of employers of domestic workers (DOMICILIO) long before domestic workers began organizing into trade unions.

Employers have also organized in untraditional ways, to meet the needs of the sector. For example, employers of domestic workers in the United States who are supportive of fair working conditions for domestic workers organized themselves into a non-profit organization in called Hand-in-hand, the Domestic Employers Association.

While these organizations work to build their numbers, there is no doubt that it will take many more years before the sector is organized to the degree that industrial or public sectors have been, even when they are weak. Even if they did, is it conceivable that collective bargaining in the domestic work sector could be an effective tool to negotiate working conditions? And how would they be able to enforce the rights they negotiate?

Mapping collective bargaining and other forms of negotiation

As domestic workers and their employers develop their organizations, some are already engaging in either collective bargaining, or other forms of collective voice and representation. What are the sources of their respective powers for articulating their respective labour interests? And what mechanisms/institutions have been put in place for domestic workers and employers to dialogue with one another about establishing working conditions or resolving disputes in practice or in policy?

In the case of collective negotiation other than bargaining, initiatives can and have been launched unilaterally by workers or by employers, starting very much at the grassroots. In each case, domestic workers (or employers) are aiming to move through the first steps to achieve target outcomes (such as improved working conditions) for a group of domestic workers: first, an organization of workers is formed, as in the case across each of our studies. Next, they gather their members to decide on certain standards: in Hong Kong, the HKCTU brought together local domestic workers to discuss how to set a decent wage depending on size of the job (apartment size, family size, number of tasks required, etc.) In Indonesia, domestic worker members of the union Tunas Mulia drafted the terms in a model contract. Both countries also then engaged in step three, negotiating their standards with individual employers of their union members. Further examples of this kind are in the process of being documented.

Employers' organizations also have initiated internal negotiations, though normally less formally. For instance, parents' associations have formed informal online discussion groups to share good practices. The Hand in Hand Employers' Association in the United States has worked with individual employers to develop a “code of care” that would set standards for employers of domestic workers. They are currently testing neighbourhood based dialogues among employers and domestic workers, with a view to establishing collective bargaining units at the neighbourhood level.

In cases where domestic workers are formally employed or subsidized by the state, negotiation mechanisms have been established to represent various employers of record, in addition to the workers. In California for instance, boards have been formed including a representative of government, of placement agencies, of the domestic workers' union, and of organizations representing the clients (elderly, disabled or otherwise in need of home care) to negotiate basic working conditions.

Finally, collective agreements have also been reached in several countries. In France and Italy, collective bargaining agreements have been negotiated between the national trade union center and the domestic employers' associations for decades. In Uruguay, the government facilitated the agreement reached between the domestic workers' union (SUTD) and the Liga de Amas de Casa, which the government had invited to act as employer counterpart.

In all of the above examples, what remains to be seen is the ability of these organizations to reach step 4: ensuring employers comply with the agreements made. Indeed, while some forms of agreement seem to have been reached, domestic work is not a sector that is likely to be able to go on strike against a particular employer. As mentioned above, the domestic employment relationship is inherently a personal one that is dependent on positive relations between employer and worker to ensure continuity. A dispute in the home therefore would not be resolved through a conflict; instead, the worker is likely to leave voluntarily, or simply be dismissed and replaced by the employer. New systems of ensuring compliance might therefore need to be explored.

Conclusion

Domestic workers organize, and so do their employers. They are also each seeking ways to have their interests represented in negotiations, whether at the household, neighbourhood, city, or national level. Each model is the product of its context, and is the result of a confluence of factors, including: the legal framework, the neighbourhoods and structures in which domestic work is carried out, whether employers are organized, whether the state subsidizes the sector, and the degree of formalization of the employment relationship. The diversity of paths taken shows the need for such negotiations in the sector; but which have shown positive outcomes? Which are most effective in terms of compliance? And which can apply to the greatest number of workers? While micro examples have the potential to be effective locally, are those models scalable to the national level? Which approaches would be most effective in making employers comply with the standards set? What promise do these initiatives have of taking root, formalizing the sector and ensuring better protections for both workers and employers?

The cases that are in the process of being documented by the ILO will hopefully shed light on some of these questions, indicating possible paths forward to making decent work a reality for domestic workers through collective bargaining and other forms of representation.