Chapter 4 Negotiating In A Highly Feminised Sector: The French Domestic Work And Home-based Care Sector

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Introduction

For a long time, domestic work and home-based care services have been considered as feminised, undervalued, unpaid, and the result of the patriarchy's exploitation of women (Daly and Rake, 2003; Ciccia and Sainsbury, 2018). Domestic work was progressively commodified and became a status symbol for rich families in nineteenth-and-twentieth-century Europe. While this has continued for domestic work in the twenty-first century, today, care workers are also employed in the homes of middle-and-low-wage families with young children or elderly dependants. In the early years of this century, the commodification of this work has been boosted by the intervention of European welfare states, which finance, regulate and legitimise the sector (Ledoux et al., 2021b). Nevertheless, workers in this sector remain excluded from much of the labour and social-security law that protects workers in other sectors (Shire, 2015; Van Hooren, 2018; Poblete, 2018; Blackett, 2019).

The sector is considered as an important source of new jobs in Europe (European Commission, 2012; Carbonnier and Morel, 2015), and its workers remain overwhelmingly female and precarious in many countries. Many of these workers have migrant backgrounds (Farvaque, 2015; Van Hooren et al., 2019). They are paid less than other workers in the EU, are eligible for fewer social-security benefits, work fragmented and atypical hours and find it difficult to make plans for their future (Farvaque, 2015; Pulignano, 2019). Many of them work more or less than typical working hours with insufficient rest periods and temporary contracts

(when declared) (Ramos and Belen Munoz, 2020). Undeclared work is still very common: in 2016, the European Commission estimated that this sector was the third most-common sector for undeclared work (European Commission and European Platform for Tackling Undeclared Work, 2016). Working 'behind closed doors' in private homes, domestic workers are vulnerable to physical, verbal, or even sexual abuse (Lutz, 2011).

The precarious nature of domestic work is, in part, due to the lack of labour and social-security laws covering it. In many countries, 'industrial relations' is defined as the relationship between representatives of employees and their employers, and does not cover domestic work (Ramos and Belen Munoz, 2020, p.42). By contrast, home-based carers in some countries have been able to benefit from some industrial-relations coverage, although many loopholes remain (Van Hooren, 2021; Apitzsch and Shire, 2021).

Belgium, Italy and France are exceptional regarding this situation. In Belgium, trade unions and employers' representatives have negotiated collective agreements covering domestic workers employed by service providers. Non-binding collective agreements have existed in Italy for more than 40 years for workers directly employed by households (Borelli, 2020). However, in France, collective agreements – all now legally binding - covering domestic workers and carers employed by households and service providers have existed for more than 40 years too, making France the only country in Europe where a wide range of home-based care and domestic work is covered by binding collective agreements (Ledoux et al., 2021a).

This chapter will therefore focus on France **:** have social partners been able to protect domestic / home base care workers against precariousness and why? It is based on 33 interviews done between 2004 and 2011 with trade-union officials, representatives of employers' organisations and civil servants, between 2004 and 2020; 7 between 2013 and 2014 and 15 between 2018 and 2020, this last group as part of the PHS-Quality and PROPAM research projects. We also analysed administrative and legal archive documents, such as the French

Labour Code (*Code du Travail*), plus the three different collective agreements that have covered this sector since the 1980s. The chapter is divided into two main sections: Background and Analysis.

In the first section, we look at how collective agreements have been analysed in the literature on gender, collective agreements and social partners. We underline how the analysis of collective agreements has to be linked with the long history of inequalities and discrimination against female, marginalised groups, especially domestic workers and carers. We then examine the characteristics of the workers and how the social partners in France negotiated and made binding collective agreements covering this sector and how these collective agreements interact with Labour law.

In the second section, we analyse the extent to which the agreements have responded to the four key needs of domestic workers and home-based carers. We also ask how they express the balance of power between trade unions and employer's organisations and the influence of the French system of institutionalised industrial relations on this.

Background

Analysing Collective Agreements Through A Gender Lens

Historically, in France (and in many other countries) national sectorial collective agreements have institutionalised differences between workers by setting different levels of pay for different categories of workers, who are classified into hierarchies of skills. An important feature of these agreements is that they under-value work predominantly done by women and its associated skills as 'natural'. In her pioneering study on the Parisian metal-working industry, Madeleine Guibert showed how skills acquired by women working at home could be used by industrial employers without being recognised: 'it is because women have the ability to perform several operations at the same time, have dexterity, speed and meticulousness, that they are hired for fragmented and repetitive work and not recognised for it' (Maruani and Rogerat,

2006). The same applies to domestic work, which, even as late as 2000, was still considered by many employers to be ‘natural’ women’s work (Dussuet, 2005) that was of low value.

In questioning whether and how the interests of women and marginalised groups were taken into account in collective agreements (Rubery et al., 2018), four types of individual needs can be distinguished: (i) income security during working and non-working periods, (ii) access to opportunities for training and career progression, (iii) fair treatment and (iv) recognition of life beyond work. All these needs can be covered by different policy instruments. Income security can be provided by a statutory minimum wage, minimum hours of work and social-security benefits. Access to opportunities requires the provision of training to acquire skills and qualifications and grants for living expenses while training. Fair treatment can be achieved by the institutional embedding of employment rights and mechanisms to allow workers to voice their opinions and grievances. Recognition of a life beyond work implies a clear division between work and non-work. In this sector, all these criteria may apply to formal (declared) work, informal (undeclared) work and ‘light formal’ work (Jaehrling, 2020).

Although social dialogue is an adversarial process of negotiation, which brings together representatives of the workers and their employers to overcome the social conflicts opposing their interests, neither side has automatically defended the interests of women (Elomäki and Kantola in this volume; Pochic and Milner in this volume). Historically, trade unions were made up of male workers who shared the same qualifications and wanted to protect them and their wages. In many cases, employers exploited divisions in the workforce and took advantage of gender inequalities, to separate female and male workers and to pay women less than men (Colgan and Ledwith, 2003)

Industrial-relations systems differ widely in Europe, where the role of the state and the autonomy of the social partners can diverge (Vaughan-Whitehead, 2018). In neo-corporatist countries, the social partners enjoy delegated power, while in more statist countries, such as

France, most initiatives come from the state, which selects the groups it wants to hear from before adopting rules. This means that social partners in France have found themselves obliged to use actions, such as strikes and demonstrations, rather than negotiations, to make their views heard. But such actions are difficult to organise for home-based carers and domestic workers because they tend to work more alone than other workers and some carers are legally obliged to remain with the people they are caring for.

The positions of social partners towards home-based carers and domestic workers during actions and campaigns have been studied much more than their positions during the negotiation of collective agreements. Local actions to unionise workers have been studied at sub-national and national (Avril, 2009; Béroud, 2013; Garabige 2017; Van Hooren et al. 2022), regional (Poblete, 2018) and global (Blackett, 2019) levels. Female domestic workers have organised themselves and built alliances with trade unions, in particular in the preparation of the 2011 International Labour Organisation (ILO) conference, where they successfully lobbied for the creation of ILO Convention 189 ('ILO 189') on rights for domestic workers. ILO 189 demands decent working conditions, a minimum wage, rest periods and other rights for domestic workers. On the contrary, even though some employers' representatives were at the conference that adopted ILO 189, very little research has been done into their opinions (Triandafyllidou and Marchetti, 2015), nor their collective actions, with some exceptions (Meagher and Goodwin, 2015; Ledoux et al.,2021a).

The development of rights for domestic workers and home-based carers in France also depends on the balance of power between them and their employers. This sector is characterised by a variety of employment relationships, each with a different status in law (Lefebvre 2013). Domestic workers can be employed by individual households, by for-profit or non-profit service providers, by public bodies or they can work as informal self-employed workers. Nearly

all declared domestic workers and carers in France are either covered by public law (when they are civil servants) or by collective agreements.

An Unfinished Standardisation Of Home Based Care / Domestic Work.

In France, most domestic workers and carers are women, some of whom are migrants, and many of whom are in precarious situations. Nevertheless, more domestic workers and carers are declared, and more benefit from basic employment rights in France than in other countries. This is directly related to the policy of incentivising employers to declare these workers and to the collective agreements covering nearly all workers in this sector. This section first describes the social characteristics of these workers and then the incentives to declare them. It ends by examining the inclusive coverage the collective agreements provide.

A Precarious Feminised Workforce.

In France, declared domestic workers and carers are placed in the administrative and statistical category of *services aux personnes* (equivalent to 'personal and household services', 'PHS'). This category also includes domestic work predominantly done by men, such as home IT technicians, so the feminisation of domestic work and care is, in fact, higher than the PHS statistics show. In 2015, 87.3% of French PHS workers were female (compared to 50.1% of all employees). They were also more likely to have been born abroad (14.5%, compared to 5.5% of all employees). Christelle Avril and Marie Cartier noted that the 2011 Labour Force Survey found that 40% of the domestic cleaners in France employed by households were immigrants (Avril and Cartier, 2014).

Moreover, the PHS workers held fewer recognised educational qualifications than the rest of the population: only 7.5% had a post-baccalaureate diploma, compared with 38.4% of all workers (Kulanthaivelu and Thiérus, 2018). They were also paid much less than the rest of the working population: on average €8,200 net per annum, compared to an average of €19,400 for all workers. They are also more prone to health problems (ibid), and experience a higher-

than-average number of accidents at work. Whilst the statistical populations do not correspond exactly with those cited above, 9.86% of domestic carers (national economic activity classification category 8810A) reported suffering an accident at work, compared with 3.34% of the entire working population. Finally, most domestic workers and carers are obliged to work part time (ibid).

Incentives To Declare Domestic Workers And Carers

While the undeclared employment of domestic workers and carers remains illegal, the French tax incentives and benefits of declaring them has reduced the comparative advantage of undeclared employment (Farvaque, 2015) and indeed made it ‘unprofitable’. The main incentive for employers is a generous income tax credit, covering 50% of the amount spent on employing a domestic worker or carer, up to a basic ceiling of €12,000 per annum, which can be increased depending on individual needs and circumstances.

An additional incentive is the system of vouchers which households receive and use to pay their employees or service providers. In the situation of employment by the households, they simplify the calculation and payment of the social-security contributions. A reduced VAT rate (10% or 5.5%) also applies to service providers. For people requiring care at home, the main care allowance, the *Allocation Personnalisée d’Autonomie*, is only paid if the claimant declares the carer(s).

These policy instruments can therefore be considered as incentivising the declaration, but this could only cause ‘light formalisation’ if it was not accompanied by employment regulations (Jaehrling, 2020). Nevertheless, the precarity of the workforce can only slightly be explained by the informality of their work. Before analysing the content of the collective agreements, we have to understand how the collective agreements complement the general labour law regulations.

Inclusive Coverage Provided By The Collective Agreements

The collective agreements cannot be interpreted without understanding how they complement the provisions and coverage of Employment Law. In France, the social partners have succeeded in making these agreements binding and more inclusive than the general provisions of the Labour Code.

The employment regulations that apply to workers depend on the nature of their employment relationship. For the domestic workers and carers covered by this chapter, there are two main types of such relationship and associated rights: employment by a private individual or employment by a service provider. Self-employment is marginal among French domestic workers and carers (accounting for only 0,40% of all PHS hours worked). While the general provisions of the Employment Code exclude workers employed by households from many employment rights, this is not the case for those employed by service providers (Kroos and Gottschall, 2012).

When the employer is a private person, his/her employee is categorised as a private domestic employee (*salarié du particulier employeur,* 'SPE') who is still today excluded from most of the protective provisions in the Labour Code: Article 7221-2 states that the only provisions applicable to these employees are those pertaining to sexual harassment, psychological harassment, the Labour Day (1 May) public holiday, paid holiday leave, special leave for family reasons and medical supervision. Case law has extended this list to include the statutory minimum wage, severance pay and the prohibition of 'clandestine work' (Ledoux and Krupka, 2020). These workers have also been declared subject to the jurisdiction of employment tribunals. However, SPEs remain excluded from other rules of the Labour Code, like the definition of 'effective work', working hours, part-time work, night work, overtime, rest periods, health and safety at work, and redundancy.

The social partners have added the benefits of collective-bargaining agreements to the employment rights of SPEs defined in the Labour Code. The Federation of Employers of

Household Staff (*Fédération des Employeurs des Gens de Maisons*), a federation of private-individual employers who were mostly Roman Catholic women, did succeed in negotiating some collective agreements at local and regional levels for domestic workers and carers in the 1950s, and successfully lobbied for the first national collective agreement covering the sector in 1951, but this agreement was never implemented. It was not until the 1980s that that Federation's successor, the Federation of Private Domestic Employers of France (*Fédération des Particuliers Employeurs de France*, 'FEPEM') managed to renegotiate this national agreement and to have the state extend it in order to cover, at least in theory, every private domestic employee-employer relationship anywhere in the metropolitan territory (overseas territories were excluded). FEPEM also contributed to the creation of complementary social protection for SPEs. The national collective agreement of 1980 was superseded in 1999 by a new collective agreement for private domestic employees (SPEs), which was then extended to cover the entire sector in metropolitan France. In July 2017, the social partners agreed to extend the provisions of the collective agreement to cover French Overseas Territories. In Spring 2021, a new version of the collective agreement, merging SPEs and childminders who care for children in their own homes was negotiated but has still not been adopted or extended.

Domestic workers and carers can be self-employed, employed by a private household or employed by a private-sector (non-profit or for-profit) or public-sector service provider. Each of these types of employer confers a different employment status on workers (see Table 1). Employees of non-profit organisations are covered by the common provisions of the Employment Code and the majority of them by the collective agreement covering care, supervision and domestic services (*branche de l'aide*, *de l'accompagnement, des soins et des services à domicile* 'BAD') and employees of for-profit service providers are covered by the collective agreement covering businesses offering personal services (*entreprises de services à la personne* 'SAP').

These collective agreements are inclusive in the sense that they cover all the employees and employers within their defined scope, but there is still no single collective agreement covering all domestic workers and carers.

INSERT TABLE 4.1 ABOUT HERE. Caption: Declared PHS Workers By Applicable Employment Status.

Employer type	Percentage of all hours worked, 2016	Employment Code applies in full?	Applicable collective agreement
Private domestic employers (direct)	50%	**No** (employees are covered only by Part VII)	SPE collective agreement
Private domestic employers (through agency)	6%		
Public bodies	4.1%	**No** (employees are civil servants)	Public law
Non-profit service providers	24%	**Yes**	BAD collective agreement, or other agreements which are more generous
For-profit service providers	15.5%	**Yes**	SAP collective agreement
Self-employed	0.4%	**No**	None
Total	100%		

Sources: (Ledoux and Krupka, 2020 and Kulanthaivelu, 2018).

Other collective agreements apply to workers in the home care sub-sector, but, for clarity, have not been included in this analysis. The BAD and SAP collective agreements have been extended to cover all individuals working in their fields, not just to members of the signatory trade unions. In addition, all the workers covered by the collective agreements applying to service providers are covered by the common provisions of the Labour Code, in contrast to SPEs (see Table 1).

Self-employed domestic workers and carers are not covered by these regulations, but they currently make up only a small part of the total workforce. Undeclared domestic workers and carers are also not covered, but they also currently make up a very small part of the workforce, because of the very strong incentives to declare them discussed above. Consequently, the precarious condition of the workers can not be totally explained by the informality of their work or by their exclusion from employment regulations: collective agreements apply to all of those who are declared.

Analysis

Inclusion, But Incomplete Standardisation

The social partners have managed to achieve inclusion within collective agreements for domestic workers and carers, composed of a majority working-class female workforce in which migrants are over-represented. What have their outputs been, in terms of the rights obtained for the workers? Our analysis is based on the four needs identified above: income security, access to opportunities, fair treatment and recognition of life beyond work.

Income Security

In the collective agreements, the social partners defined basic rights, some of which are more generous that those defined in the Labour Code, but with many loopholes and grey areas. In general, domestic workers and carers working for service providers are given more income security that those working for private households.

The collective agreements contain wage-grid classifications and seniority rules, but the options for increasing average wages above the minimum wage are limited. In addition, the dividing lines between work and non-work are not clear, generating grey areas. This has consequences for both income security and of recognition of life beyond work. The definition of 'effective work' in the common rules of the Labour Code does not apply to SPEs, but does apply to BADs and SAPs. The SPE collective agreement defines three types of remuneration at below the statutory minimum wage for activities defined as 'responsible attendance', 'night attendance' and 'nursing duties'. This means that SPEs have to work many more hours than other workers to earn decent wages, and puts them at risk of impoverishment: the minimum wage does not apply for these hours since they are not considered as 'work'. The two other collective agreements (covering BADs and SAPs) do not include these specific rates and they use the definition of 'effective work' provided in the common rules of the Labour Code.

The difficulties can also be found in the regulations applied to travelling between homes. For SPEs, the time spent travelling between locations when working for two different employers is not considered as working time and therefore is not paid, nor are expenses reimbursed for it. By contrast, travelling time for employees of service providers (i.e. BADs and SAPs) can theoretically be considered as working time, although it is subject to conditions (Ledoux and Krupka, 2020).

Income security can also be difficult to achieve for part-time workers. In principle, there is a minimum part-time working week of 24 hours, except where a collective agreement over-rides this. The principle does not apply to SPEs. The collective agreement for BADs makes it easier for employers to limit weekly hours to 17, and the collective agreement for SAPs has no clauses derogating from the 24-hour minimum working week. Nevertheless, both collective agreements permit derogations from the minimum working week agreed between employers and workers. This shows that the social partners in the non-profit service-provider sector have

seized the opportunity to ignore the general legal minimum wage and working hours, thus increasing the precarious status of domestic workers and carers. The high poverty rate among domestic workers and carers in France is therefore explained by their limited working hours.

Income security can also be provided by social-security benefits. If they are declared, domestic workers and carers are eligible to receive basic sick pay, and are covered by supplementary insurance covering sickness, incapacity for work and disability, as agreed by the social partners in all three collective agreements. In 2021, these provisions made it possible for domestic/ care workers to receive replacement wages if they tested COVID-positive and their healthcare expenses were also covered. The situation is worse as regards unemployment benefits and the state pension because many SPEs fail to register for unemployment benefit. The situation for SAPs and BADs is better (Ledoux and Krupka, 2020). However, the social partners negotiated the provision of a supplementary pension scheme for SPEs, although this only paid out an average of €112 per month in 2018 (ibid).

Access To Opportunity

The three collective agreements all include professional training opportunities funded through specific levies over and above the legal minimum. Adding these additional agreed levies to the legal minimum levy for professional training results in overall levies of 0.35% for SPEs, 2.04% for BADs and 1.40% for SAPs. This means that in all three sub-sectors, the discourse on professionalisation has been transformed into a policy: the social partners no longer consider that the work done by the mostly female workforce is 'natural' women's work, and they have acted to promote training.

Nevertheless, the lack of a career structure and hierarchy in much of the domestic work and care sector (and especially for SPEs) means that, even if they take advantage of the training opportunities available, most workers cannot gain promotion and better pay, which raises the question of whether they are real opportunities. In addition, the fact that a worker can

simultaneously be employed by a private household and a service provider, and thus falls under two, incompatible, collective agreements and thus two training systems, makes it more difficult to access training opportunities.

Fair Treatment

In most sectors, the workers elect their trade-union representatives to negotiate collective agreements, but this electorate is limited to workers who pay employee social-security contributions. In contrast to employees of medium-sized or large organisations, very few SPEs are trade-union members in regular contact with trade-union officials in the workplace, so it is more difficult for them to benefit from trade-union protection. Similarly, as employment inspectors do not have the right to enter private homes without the household's permission, SPEs cannot benefit from workplace inspections either.

Recognition Of Life Beyond Work

In the three collective agreements, the recognition of life beyond work is less developed than in other sectors, and the trade unions have not managed to defend the interests of the workers in this area. Definitions of working hours differ widely between the collective agreements.

For SPEs, the 40-hour definition of a full-time working week is five hours more than the legal norm specified in the Labour Code of 35 hours, meaning that paid overtime only begins after 40 hours have been worked. For BADs and SAPs, the 35-hour working week is the full-time norm. None of the three collective agreements completely cover all the tasks related to work, so the time spent by workers preparing for work and for co-ordinating with colleagues, professionals and families remains a grey area.

For the providers, the trade unions agreed to flexibility in return for the workers' benefits obtained. For example, in 2021, the BAD collective agreement allows 4 unpaid breaks per working day of more than 4 hours, and the SAP collective agreement allows 5, whereas the Labour Code specifies one 2 hours unpaid break per day, although it does permit collective

agreements to derogate from this rule. In this sub-sector, the social partners have reduced the recognition of life beyond work for a largely female workforce, thus increasing their availability for work.

To conclude, the analyses of these three collective agreements have mixed conclusions. Although the social partners have achieved minimum rights for workers in a sector where there are no such rights in many other countries, these rights are fragmented and no clear definition has been made of 'effective work', no clear delineation between work and non-work, so that employment contracts call for 'permanent availability' of the workers which is common for a feminised workforce (Avril and Ramos Vacca, 2020). This has consequences for the workers, who are only paid (part-time) wages for the hours they work, despite being away all day. On the other hand, the social partners have managed to introduce supplementary social-security contributions for complementary social protection and training. We will see now how the unequal balance of power between social partners contributed to this situation.

The Balance Of Power Between The Social Partners

The characteristics of the three collective agreements can be explained by the unequal balance of power between the social partners who negotiated them. In all three sub-sectors both employer's organisations and trade unions are fragmented. We will first explain this fragmentation, before analysing the negotiation of each of the three collective agreements. Finally, we will examine the defence of undeclared domestic workers and carers.

Fragmented Social Partners

The fragmentation is the result of the evolution of each partner's identity over time. The three distinct employer types had their own collective agreements by the 2010s: the private households (with their SPE agreement), the non-profit service providers (with their BAD agreement) and the for-profit organisations (with their SAP agreement). The trade unions are equally fragmented, as the three collective agreements fall under the auspices of different

component federations within the national trade union confederations, just as they do within the employer's federations (see Table 2). The collective agreements can be seen as defining the identities of the social partners involved in negotiating them (Lefebvre 2013).

This fragmentation also entails a sort of competition between the three sets of social partners who negotiated the three collective agreements. In some cases, this competition has led to a 'race to the bottom', where the employers' representatives' main objective is to reduce the employers' costs as much as possible. However, the representatives of the non-profit organisations (in the BAD sub-sector) try to claim that they concluded the most protective collective agreement towards their workers.

All the social partners now recognise the feminisation of the workforce, the necessity to 'professionalise' it and that the skills required to do the work are not mere 'natural' female skills.

INSERT TABLE 4.2 ABOUT HERE. Caption: Social Partners By Collective Agreement, 2019.

Collective agreement	**Legal status of agreement**	**Trade-union federations**	**Employers' organisation(s)**
Private Domestic Employees (**SPEs**), 1999	Extended sub-sector-wide in 2000	- CGT Commerce (39.24%) - CFDT Services (20.05%) - FGTA-FO (19.51%)	- FEPEM (100%)

		- FESSAD UNSA (21.20%)	
Non-profit Home Carers (**BADs**), 2010	Approved in 2011, Extended sub-sector-wide in 2012 (Approval of the Minister of Social Affairs required before extension procedure)	- CFDT Public Health (47.42%) - CGT Social Action (38.46%) - FDTA-FO (14.11%)	- USB Domicile (100%), made up of: + ADMR + UNA + Adessadomicile + FNAAFP/CSF
For-profit Service Providers (**SAPs**), 2012	Extended sub-sector-wide in 2014	- CGT Commerce (15.63%) - CFDT Services (39.45%) - FDTA-FO (14.29%) - CFTC Public Health (30.63%)	- SESP (44.3%) - FEDESAP (32,3%) - SYNERPA (13.7%) - FFEC (9.8%)

Source: Ledoux and Krupka, 2020

Negotiating The SPE Collective Agreement

In this sub-sector, although the social partners are not very representative since very few people took part in the elections or were members of the unions and the employer's federations, they have managed to agree to add new workers' rights to the collective agreement and its codicils from which the workers are excluded in the Labour Code. On some points, they went beyond the provisions of the Labour Code, especially for social protections, although they have failed to amend the collective agreement to keep up with developments in employment law (Kerbourc'h, 1999).

The balance of power between FEPEM (the organisation representing private-households employers) and the trade unions is firmly in favour of FEPEM, as it is the sole representative of employers, whereas there are four trade unions representing the workers. The trade unions are thus unable to negotiate any improvements to the very basic rights provided in the Labour Code without FEPEM's agreement. The FEPEM also had an interest in some of the concessions made to the trade unions on improved social-security rights and better access to training opportunities: first, they are implemented by satellite organisations related to the FEPEM. Second, FEPEM tries to maintain specific tax breaks for private households. Talking about its social commitment can help. Third, the FEPEM has relatively few members, who have little control over the negotiators (Ledoux and Krupka, 2020).

For FEPEM, the improvements in social-security protection were easier to accept since the increased contributions to be paid by employers are largely offset by income-tax breaks. By contrast, FEPEM has found it much more difficult to accept a definition of 'effective work' as it is committed to preserving the freedom of employers to only pay their workers when they require them.

The trade unions are aware of the difficulties encountered by the declared workers they represent. But their position seems to be somewhat fatalistic, as if it they would have accepted

they couldn't afford to demand more. They know that they cannot push FEPEM too far, and therefore have only made incremental demands for improvements.

Negotiating The BAD Collective Agreement

The non-profit service providers as employers in this sub-sector talk a lot about their attachment to social values. Some of their representatives are former trade-union officials. Nevertheless, the employers' organisations in this sub-sector have little room for manoeuvre as they depend very much upon the government for their financing (Garabige 2017). Besides, the employers sometimes presented proposals of the trade unions they opposed as being to the detriment of the vulnerable and disabled people domestic workers and carers work for, their social values been the justification of the limitations of worker's rights. This explains why certain codicils to the BAD collective agreement make the availability of public funding a condition for their implementation, and also why the trade unions accepted clauses in the collective agreement which reduce working conditions and benefits below the minimums in the Labour Code, as if they had no choice (in the case of the wage, the legal minimum wage nevertheless applies: the superior regulation prevails).

During the negotiations on the BAD collective agreement, some of trade unions attempted to include a ban on work sessions of less than 30 minutes for workers. A petition was even started to put pressure on employers, but the unions lost this particular battle, as well as one to obtain pay for travel time between two non-continuous sessions until these parts of the collective agreement were overturned by case law from litigation by the Labour Inspectorate.

However, the proximity of employer's federations and the trade unions in this sub-sector did create an opportunity to secure some protection for night workers. Even though the president of the ADESSA employers' network declared in 2009 been opposed to night work at the full rate, this was subsequently agreed, and the employers stated they were proud to be

‘more social’ and providing ‘better worker’s rights’ than their counterparts in the other two sub-sectors.

Negotiating The SAP Collective Agreement

The employer’s representatives in this sub-sector negotiated their agreement lately and were inspired by the SPE agreement, but they came up against experienced and professional trade-union representatives who were able to block their proposals, either during the negotiations or by litigation.

Initially, during the negotiation of the agreement, one of the employers’ organisations tried to introduce a form of flexible part-time employment contract with a defined minimum number of working hours and an option for the worker to take on additional work above that threshold if they wished (Ledoux et al., 2021a). This proposal was rejected by the trade unions, who threatened not to sign the agreement if the clause was retained. In other respects, the SAP collective agreement took the SPE collective agreement as a model, in an attempt to start a race to the bottom. For example, one provision transposed from the SPE collective agreement - covering night attendance - was adopted and extended to the whole sub-sector before being struck down and deleted as the result of litigation by the CGT. This demonstrates that a trade union which rejected an agreement signed by the other trade unions was able to use the courts to remove clauses it considered unfair. The federal CGT representative told us, ‘As an example, I have on file the case of someone who worked 400 hours a month, day and night. She was exhausted. This was not acceptable, so we took the decision to bring a case before the Council of State, which cost €11,000 in lawyers’ fees. We would have liked to have had everything quashed, but on two points we did succeed’ (Interview in 2019). This ‘judicialisation’ can be explained by three factors: the much more hostile relationships between the unions (especially the CGT) and the employers’ organisations in the SAP sub-sector, the existence of basic protections provided by Labour Law and the resources of the trade unions.

Some of the CGT officials we interviewed stated quite frankly that they opposed the very existence of for-profit domestic work and care providers (Interviews in 2006 and 2019), but, on this point, the CGT is in a minority among the trade unions. In fact, the CGT withdrew from the negotiations at one point, and only returned after reforms to the representation process offered participants more resources. Nevertheless, Labour Law gave the possibility to judicialise its opposition and to succeed in court.

Defending The Interests Of Undocumented Migrant Domestic Workers And Carers

Trade-unions encountered more difficulties in defending the rights of undocumented migrant domestic workers and carers, but they did manage to include this group in some of their actions. In 2008, some CGT local officials worked with NGOs to unionise undocumented migrant workers in specific workplaces, but these were nearly all male workers in other sectors, though a few female domestic workers were included (Barron et al., 2011).

In parallel to this, in the 2000s, Ms Z, a Filipina migrant domestic worker who had been helped to escape from a modern slavery situation by NGOs and the CFDT, joined the CFDT and became an official. She attempted to get undocumented domestic workers to join the CFDT in Paris and founded an association to support her fellow Filipinas (Ito, 2016). However, she had resigned from the CFDT by 2020. Another organisation representing the interests of home-based care workers (*auxiliaires parentales*), the UNSA-SNAP-SPE also took action in support of undocumented care workers. These trade unions, associated with NGOs, organised some demonstrations and petitions, but with limited impact (Van Hooren et al. 2022).

In summary, the trade unions did defend workers' rights in all three sub-sectors. Conscious of the highly feminised character of the workforce, their representatives used 'she' when talking about individual domestic workers and carers. Nevertheless, they mostly used traditional trade-union tactics and actions to defend them. They tried to bring the workers' rights closer to those of the rest of the workforce, but in some cases they failed to be heard by the

employers. In other cases, such as the SPEs, they simply did not dare to ask for major changes. Besides, some trade unions also agreed to sign agreements which worsened the rights of the workers in comparison to labour law. These cases mostly concern the regulation of working hours. They also found it difficult to recognise the other needs of the workforce, particularly those of the undocumented migrant workers. The collective agreements reflect different balances of power, within each of the social partners and between them, and between the different sub-sectors. Nevertheless, the fact that these negotiations could take place and that the social partners were equipped to negotiate them reflect the institutional features of the French system.

The Influence Of The Institutionalised Industrial Relations System On The French Social Partners.

The French institutionalised industrial-relations system has an important influence on the positions and actions of the social partners who negotiated the three collective agreements, and this section explores three aspects of this influence. First, how did it allow the agreement covering the BAD sub-sector to be extended, albeit in a limited way? Second, how did it make it possible for the trade unions to be active representatives of the workers, even though hardly any of the workers were active trade-union members? Third, how were the dialogues between the social partners professionalised by a system of codetermination funding?

Institutional Influence On The Extension Of The Collective Agreements

The habit of the French Ministry of Employment to extend collective agreements and make them legally binding for all employers and workers in a sub-sector is a very powerful means of achieving inclusiveness as it means that the coverage of the agreement is not limited to the members of the organisations that elected the social partners (Van Hooren et al., 2022).

Such an extension was more difficult for the BAD collective agreement because the social partners had first to obtain approval from the Ministry of Solidarity before approaching

the Ministry of Employment to request the extension. Through a lobbying campaign they succeeded in gaining this approval and then the extension, but after 2010, the wage increases obtained were very modest.

Ensuring The Social Partners Are Active Representatives

Domestic workers and carers are a difficult group for trade unions to reach and unionise (Garabige 2017, Van Hooren et al. 2022), but the very small numbers in this group of workers who are union members did not hinder the election of workers' representatives, because the electors did not have to be union members under the French system. The new system defining the social partners, which has been implemented gradually since the reforms of 2008 and 2014, established a 'presumption of representativeness' using 'audience measurements', with different criteria for trade unions and employer organisations.

For the trade unions, representativeness is established by means of 'mechanisms which borrow from the procedures of political democracy, in particular the election and the majority' (Andolfatto, 2014). The seven criteria used include 'audience', established at sector level by a trade union's performance in the elections of employee representatives and work councils. In small and medium-sized businesses and the SPE sub-sector, there is a specific electoral system with online and postal voting. To be adopted, a collective agreement or one of its codicils must be signed by trade unions representing at least 30% of the votes cast for recognised organisations in the sub-sector and must not be formally opposed by trade unions that won at least 50% of the votes cast.

For the employers, an organisation's representativeness is established using six criteria which also include 'audience'. This criterion is measured by the number of companies that are voluntarily members of the organisation or by the number of declared persons they employ. In practice, this means an organisation must represent either at least 8% of employers or at least 8% of workers counted in the procedure in order to be recognised as representative. This system

made it possible for FEPEM to be considered as representative of, and to speak on behalf of the 3.4 million households who employ domestic workers and carers in France, despite not having many members. This system also enabled the use of the resources of the biggest trade-union confederations to be used to defend the rights of domestic workers and carers and it also enabled the social partners to gain specific resources through their negotiations.

Codetermination Funds

Many authors have suggested that the changes within trade unions towards a better defence of female workers could be explained by the feminisation of the trade-union memberships and elected officials or by material reasons (Colgan and Ledwith, 2003; Guillaume, 2018). We would rather suggest that the institutionalised industrial-relations system and public policies have also encouraged this change (Van Hooren et al. 2022). The existence, inclusiveness and content of the three collective agreements covering domestic workers and carers depend on the vested interests of the social partners, but also on their capacity to negotiate, which, in turn, depends on their resources and knowledge.

In France, the ability of the social partners to use the negotiation of collective agreements to generate financial resources for themselves has been significant, especially in the SPE sub-sector. A national codetermination fund was set up in 2014-2015, to make grants to the social partners, but they are also able to secure sub-sectorial funds. The social partners involved in negotiating the three collective agreements examined here have negotiated additional financial resources, paid for by additional social contributions. The rates at which these additional contributions are set vary in the three sub-sectors: from 0.22% in the SPE sub-sector to 0.04% in the BAD sub-sector and 0.10% in the SAP sub-sector. For each pair of social partners, these resources are allocated roughly 50-50. They are supposed to be used to improve structures in the sub-sector, improve understanding of the collective agreements and to develop social dialogue. They are typically used to finance academic studies, pay officials, hire lawyers

and rent offices, all of which have helped both trade unions and employers to adopt a more professional approach.

Conclusion

In France, social partners have negotiated collective agreements which have been extended to include nearly all declared domestic workers and carers, who are not civil servants. Although both trade-unions and employers in the three main sub-sectors of home-based care and domestic work are fragmented, these collective agreements have introduced minimum rights, regulations and protections where previously there were none. Nevertheless, the precarity of these workers was not ended, since regulations concerning income security and recognition of life beyond work remain limited and part-time work remains the norm. In this sector, the question of the availability of the female workforce and the acknowledgement of its value and work remains unanswered -especially for the SPEs-, even if some progress has been made, especially in comparison with other countries (Van Hooren et al., 2022)

The positions of, and balances of power between, the three sets of social partners differ: in the SPE sub-sector the employers' federation has relatively few members, giving it considerable room to manoeuvre; in the BAD sub-sector the employers' federations' actions are limited by state intervention and their claims that they are defending social values, and in the SAP sub-sector the employers' federations' attempts to transfer clauses from the SPE sub-sector's collective agreement have been prevented by opposition and/or litigation by the trade unions. The institutional context has encouraged the social partners to participate in the negotiations, without having many workers or employers as members. Nevertheless, the French system has created a group of elite negotiators, who sometimes have found it difficult to understand the needs of the workers or employers they officially represent and to go beyond the traditional repertoire of social partners.

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