

## Relations industrielles Industrial Relations



### The Aftermath of the Global Financial Crisis and Union Strategies in the Australian Public Service

### Les conséquences de la crise financière internationale et les stratégies syndicales dans le secteur public australien

### Las consecuencias de la crisis financiera internacional y las estrategias sindicales en el sector público australiano

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#### Résumé de l'article

Le Community and Public Sector Union (CPSU) australien a trouvé dans les politiques du gouvernement travailliste un tremplin pour enclencher un mouvement de renouvellement syndical. Deux facteurs contextuels ont contribué à cet essor. D'une part, le *Fair Work Act* de 2009 a redonné aux organisations syndicales un droit de cité dans les lieux de travail en favorisant la négociation collective comme méthode de détermination des conditions de travail. D'autre part, cet élan favorable a trouvé une impulsion dans les politiques d'austérité mises en oeuvre par le gouvernement travailliste afin de mater le déficit budgétaire provoqué par la crise financière de 2008. Le gouvernement travailliste a d'abord exigé des compressions des dépenses de 1,5 % pour ensuite les hausser à 4 % en novembre 2011. Le gouvernement fédéral a alors donné à la Australian Public Service Commission le mandat de superviser les négociations salariales de 2011 en même temps que diverses mesures d'austérité se soldaient par des coupures de postes au sein de la fonction publique fédérale australienne. Dans ce contexte, le CPSU a développé des stratégies innovatrices visant à faire pression sur les directions des agences et sur le gouvernement central. Cet article documente plusieurs de ces actions dans le but d'évaluer dans quelle mesure elles ont contribué au renouvellement de l'action syndicale. L'analyse des matériaux suggère que ces actions ont contribué à faire de la campagne de recrutement de nouveaux membres mise en oeuvre en 2011 un vif succès. L'utilisation des nouvelles technologies de communication, l'organisation de rencontres avec les membres sur les lieux de travail et des moyens de pression novateurs ont permis de rehausser les capacités d'action de ce syndicat. Le cas étudié démontre que même dans un contexte d'austérité budgétaire, les organisations syndicales peuvent améliorer leurs moyens d'action et de mobilisation.

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# The Aftermath of the Global Financial Crisis and Union Strategies in the Australian Public Service

Cameron Roles, Michael O'Donnell and Peter Fairbrother

**While Australia escaped the harshest aspects of the Global Financial Crisis (GFC), public services at the federal level have experienced financial stringency in the form of efficiency-related budget cuts from late 2011 as the Australian government strived to achieve a budget surplus. This paper explores the ways in which the main Australian Public Service (APS) trade union, the Community and Public Sector Union (CPSU), developed innovative strategies in 2011 and 2012 to meet this challenge. The CPSU was able to utilize the capacities and experiences gained from operating under a conservative government to expand its activities and capabilities from 2007 under a more socially aware, though neo-liberal, Labor government whose industrial relations legislation and policy agenda were more supportive of collective bargaining. The CPSU developed more targeted campaigns, deployed a broader range of industrial tactics, and mobilized the union's membership in more active and creative ways. The outcome was a renewed form of trade unionism.**

**KEYWORDS:** union renewal, union capacity, efficiency savings, global financial crisis, industrial action

## Introduction

Australia managed to avoid a recession following the onset of the Global Financial Crisis (GFC) in 2008. Domestic banks remained profitable and had limited exposure to the United States' sub-prime mortgage problems. The newly elected Labor government implemented a large-scale fiscal stimulus which encouraged economic activity and created the conditions for the retention of jobs in key areas of the economy. It was common for working hours to be reduced thereby avoiding lay-offs. The government also maintained financial stability by guaranteeing all bank deposits and by supporting intra-bank lending by Australia's major banks. It also undertook substantial investments in infrastructure, health

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services and education (Rudd, 2009). The stimulus spending, however, meant that the Labor government expanded government borrowings and debt levels, albeit to a relatively modest level compared to other developed economies, while the government's annual budget went into deficit. The Labor government promised to return its budget to surplus by 2012-13, and was determined to keep that commitment (Treasury, 2012). It is within this context of increasing government austerity towards the public services that we explore the ability of the Community and Public Sector Union (CPSU) to mobilize its membership to take creative forms of industrial action to minimize cuts to jobs, real wages and employment conditions across an Australian Public Service (APS) workforce of approximately 167,700 in December 2011 (APSC, 2012; CPSU, 2011c). We focus on the PSU (or public service) group of the CPSU that has a membership of approximately 60,000. This group represents employees in the APS and other public service jurisdictions, such as the Northern Territory and the Australian Capital Territory, and also organizes workers in telecommunications, call centres, broadcasting and employment services (CPSU, 2011e).

The argument presented here is that the Labor government's recognition of collective bargaining and its efficiency drive presented an opportunity for public service unions to mobilize their membership and review the ways in which they organized and operated. Of course, such occasions do not necessarily lead to changed practices and a redefinition of union purpose. Nonetheless, they do provide an opportunity for unions to reposition themselves to exercise collective power in distinct ways. In a noteworthy essay, Lévesque and Murray (2002) demonstrate how unions might mobilize their power resources in relation to the changing balance of power brought about by changes in global capital. They focus on three particular levers of union power: agenda (or "pro-activity" and the ability of unions to shape an agenda); internal solidarity (democracy and cohesion within unions); and external solidarity (alliances and inter-union articulation). Recently, these authors have considered union power, focusing on union resources and capabilities. They identify four strategic capabilities: "intermediating between contending interests to foster collaborative action and to activate networks; framing; articulating actions over time and space; and learning" (Lévesque and Murray, 2010). The focus on strategic capabilities, a second order of consideration, draws attention to the ways in which capacities can be mobilized and articulated. Building on these insights, our argument is that in "crisis" situations, which in the APS has taken the form of a post GFC efficiency drive, unions can draw on past experiences of reform to lay the foundation for more effective uses of their capacities in these changed circumstances. We draw on interviews with several senior CPSU officials on the union's executive committee during the 2011-12 bargaining round and analysis of the CPSU's bargaining campaign across a number of key APS agencies to develop our analysis.

To explore the dimensions of union renewal, we undertake eight steps. In the first section, we locate public service unionism in relation to the ways that public services have changed over recent decades. In the second section, relevant legislative changes and initiatives are reviewed, noting that Australia has a juridically defined industrial relations system. The third section examines how the current legal arrangements formally impact on the CPSU. Section four comprises an analysis of the ways in which the CPSU has sought to make effective use of these legal provisions. In section five we review the role of the “employer”, the Australian Public Service Commission. Forms of industrial action undertaken by CPSU members are examined in section six. The outcomes of the 2011-12 bargaining round for the CPSU are explored in section seven. Finally, in section eight, we provide an assessment of the study, followed by a brief conclusion.

## Neo-liberalism and Public Service Unionism

[The GFC] has called into question the prevailing neo-liberal economic orthodoxy of the past 30 years – the orthodoxy that has underpinned the national and global regulatory frameworks that have so spectacularly failed to prevent the economic mayhem which has now been visited upon us (Rudd, 2009).

Neoliberalism has been defined as a political project to “visualise a free-market utopia”, involving the “downsizing of nation-states [that] enlarges the space for private accumulation, individual liberties and market forces” (Tickell and Peck, 2003). Governments became the facilitators of markets, while applying quasi-market procedures to their own managerial agents and public sector labour generally. Central to this agenda is the restructuring of state employment and industrial relations, with an increased emphasis on the individualization of the terms and conditions of employment. This agenda also involved a reshaping of the administrative structures of the state, into agencies or cost centres, coordinated through new mechanisms of managerial control (Fairbrother *et al.*, 2012).

In Australia, the CPSU had spent much of the 12 years that preceded the GFC responding to the efforts of the conservative Howard government to individualize employment relations in the APS. The *Workplace Relations Act 1996* (Cth) individualized employment arrangements by providing for individual statutory employment contracts known as Australian Workplace Agreements (AWAs) that could override collectively bargained agreements (Weeks, 1999). Employer controls were enhanced through recast freedom of association provisions that abolished most forms of union security and placed the individual right not to belong to a trade union on an equal footing with the right to associate (Quinn, 2004). The legislation also constrained the CPSU’s ability to develop workplace organization by giving employers unilateral control over whether, and with whom, they wished to collectively bargain (McCallum, 2002). The legislation also imposed tighter

legislative restrictions on unions' rights of entry to workplaces, tough restrictions on the taking of lawful industrial action, and prohibitions on payment during such action (Creighton and Stewart, 2010). A major package of amendments to the *Workplace Relations Act*, known as "Work Choices", were introduced in 2005 which further individualized employment relations and imposed tighter restrictions on unions' rights of entry into workplaces, and on the taking of industrial action (Owens and Riley, 2007; Stewart, 2008). In the public sector, the Howard government introduced highly prescriptive bargaining parameters that promoted individualized employment arrangements at the expense of union bargaining (O'Brien and O'Donnell, 1999). These initiatives were compounded by budget cuts in the form of yearly efficiency "dividends", and the devolution of increased prerogatives over labour and financial controls to agency managers, via the *Public Service Act 1999 (Cth)* (O'Brien and O'Donnell, 2007).

During this period, the CPSU undertook a major reorganization of the way it responded to the increasingly managerial state apparatus that was emerging (O'Brien, 2006). The union began a twin process of centralizing its national structures while at the same time providing increased autonomy for workplace delegates to negotiate agreements at agency level as best they could. While the major achievement of the union was its survival through this period, it came at a considerable cost in terms of declining membership, high turnover among union workplace representatives, and a significant rise in individual contracting across the APS (O'Donnell, O'Brien and Junor, 2011). Nonetheless, the election of a Labor government in late 2007 provided the opportunity for a return to a potentially more union friendly, collectivist industrial environment and the abolition of individual contracting. The Labor government's *Fair Work Act 2009* and revised APS Bargaining Framework made it clear that the rights of union workplace representatives across the APS would be respected. These measures provided the union with the space and opportunity to extend and develop their capacities in distinctive and beneficial ways.

## Setting the Scene: Legislating the Industrial Relations Terrain

In the context of a long-term project to "modernize" the state in line with the presumptions of a neo-liberal agenda, successive governments in Australia and the United Kingdom introduced legislation designed to regulate trade unionism, albeit with different emphases, depending on the political complexion of governments (on the distinctiveness of approach, see Bach and Kessler, 2012). In the lead up to the GFC, the Howard government in Australia sought to prescribe industrial relations for the public services, as well as the economy more generally, in ways that attempted to effectively neuter trade unionism (Peetz,

2006). In contrast, in the GFC and post GFC environment, more socially aware, but neo-liberal Labor governments, sought to regulate industrial relations in the public services in ways that were compatible with their more collectivist policy agenda. Nevertheless, when government sought to contain real wages growth and to cut jobs and employment conditions, it encountered a union movement prepared to make use of the enhanced collective bargaining and industrial action opportunities.

During the 2007 election, the CPSU participated vigorously in the Australian union movement's highly successful "Your rights at Work" political campaign against the Howard government. Following the 2007 election, the Rudd Labor government legislated to phase out AWAs (see *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008 (Cth)*). In February 2008, the Labor government updated the Australian Government Employment Bargaining Framework, which, among other things, prohibited the offering of AWAs or other forms of statutory individual agreement to APS employees (DEEWR, 2008). Collective bargaining was also encouraged and there was specific mention of the rights of union workplace representatives, or delegates, to consult with members within the workplace, and to engage in bargaining with management at the agency level. In addition, agency heads were required to respect the role of union delegates and to facilitate their activities in the workplace (DEEWR, 2008).

In 2009 the Australian Parliament passed the *Fair Work Act 2009 (Cth)*, establishing a system of industrial relations that emphasized the primacy of collective bargaining. These collective bargaining laws are extremely detailed (Creighton and Stewart, 2010), and are somewhat different from those familiar to a North American audience. For one thing, collective bargaining in Australia is generally at the level of the employing enterprise rather than the plant, and has been since 1993. In the APS context, bargaining has been fragmented and occurs at the department or agency level. This is purely a policy choice, not a legal requirement. It would be possible for the Australian Government to enter into an APS-wide enterprise agreement but "It is Australian Government policy that agencies should seek to cover all of their non-SES employees in one enterprise agreement per agency, other than in exceptional circumstances" (APSC, 2011, para 1.2.2).

Enterprise bargaining under the *Fair Work Act* was also between an employer and employees, and employees must ultimately vote to accept or reject any proposed agreement (*Fair Work Act*, section 181). Most collective bargaining rights under the *Fair Work Act* accrue to bargaining representatives, and an employer must notify employees that they are entitled to be represented by such a representative (*Fair Work Act*, section 173). A bargaining representative can be an employer, or someone appointed by the employer to bargain on its behalf, or

a trade union, or individual employee, or an agent (*Fair Work Act*, section 176). In practice, employers are generally their own bargaining representative and trade unions generally, but not exclusively, represent the interests of employees. It is not unusual in Australia to have an employer, a trade union and bargaining representatives representing non-unionized workers all negotiating one enterprise agreement. In some instances this proliferation of bargaining representatives can become unwieldy, but Fair Work Australia, who maintain oversight of the collective bargaining system at a national level, can issue a bargaining order if bargaining is not proceeding “efficiently or fairly because there are multiple bargaining representatives for the agreement” (*Fair Work Act*, section 229(4)(a)(ii)). Bargaining orders can also be issued if a bargaining representative is not bargaining in accordance with the statutory good faith bargaining requirements (*Fair Work Act*, section 228), though these requirements, while central to the operation of the *Fair Work Act*, played a peripheral role in the APS during the 2011-12 bargaining round.

### **CPSU and Fair Work**

The introduction of the *Fair Work Act* has made it very difficult for APS agencies to resist union involvement in collective bargaining. The bargaining provisions of the *Fair Work Act* generally apply to “bargaining representatives”, and the CPSU is the default bargaining representative of its members during bargaining (*Fair Work Act*, section 176(1)(b)). So if the CPSU had one member in an agency covered by a proposed agreement, and that member wished to be represented by the CPSU, the union had a seat at the bargaining table. These legislative provisions have ensured that unions are now almost always key participants in collective bargaining negotiations in APS agencies. The hand of the CPSU has been further strengthened by the good faith bargaining requirements, and the government’s insistence that it expected agencies to bargain with bargaining representatives in good faith (APSC, 2011, para 1.3.15). The good faith bargaining requirements imposed a range of obligations on bargaining representatives. By far the most contested were “refraining from capricious or unfair conduct that undermines freedom of association and collective bargaining” (section 228(1)(e) and “recognising and bargaining with the other bargaining representatives for the agreement” (section 228(1)(f). Although the CPSU did not litigate these provisions in the 2011-12 bargaining round, they were used to apply pressure to agencies.

The combined effect of the Australian Government Employment Bargaining Framework and the introduction of the *Fair Work Act* signalled a more accommodating approach to both collective bargaining and public sector trade unions. But the *Fair Work Act* still contained some aspects of the Howard

government's Work Choices laws. For example, the Work Choices restrictions on industrial action and union right of entry remained in the *Fair Work Act* in substantially the same form (Fenwick and Howe, 2009; McCrystal, 2009). These restrictions on industrial action played a key role in shaping the actions of the bargaining participants in the 2011-12 APS bargaining round.

## The CPSU at Work

These legislative and related measures set the terrain for the CPSU to approach bargaining in 2011-12. The union had addressed its organizational arrangements during the Howard government years. Following two contradictory logics it had strengthened the central leadership of the union and had also delegated increased responsibilities to local level delegates, and these measures occasionally resulted in conflict between national and local officials and activists (Fairbrother *et al.*, 2012). Part of the problem was that the union had yet to take the next step, namely to develop the capacities of the union *qua* union.

In September 2009, the Labor government decided to align the expiry date for all new APS agency agreements to 30 June 2011. The CPSU organized meetings of union delegates across the APS from late 2010 to develop its bargaining position, referred to as the "Better way to Bargain" campaign. Following extensive consultations with members and workplace representatives, the union compiled a comprehensive document setting out its bargaining claims. These claims were voted on by union members, with some 97 per cent of the 15,000 members who voted endorsing the claims and the union's bargaining agenda (CPSU, 2011c). Nevertheless, the combined effect of falling taxation revenues in 2011 and an expanding budget deficit placed unanticipated financial constraints on Australian government revenue. The Labor government reported an AU\$37 billion deficit for the 2011-12 financial year, but promised to return the budget to surplus by 2012-13 (Johnson, 2011). In order to achieve this policy ambition, the government needed to constrain expenditure significantly. As a result, the government abandoned the notion of one APS wide agreement and left the existing agency-by-agency approach to bargaining in place. In January 2011, the government issued a new APS bargaining framework which required agencies to:

- Ensure that all salary increases are productivity based, and should be no more than an average annualized wage increase (AAWI) of 3 per cent from the nominal expiry date of the current agreement to the nominal expiry date of the proposed agreement;
- Ensure that any wage increases come from existing budgets and do not involve the diversion of program funding;
- Ensure that wage increases are prospective, unless "exceptional circumstances" existed;



- Include recommended model clauses to improve consistency between APS agreements; and
- Ensure that the Australian Public Service Commission (APSC) signed off on an agency's compliance with the bargaining framework (APSC, 2011).

In addition, the Labor government increased the annual "efficiency dividend", or across the board cut in funding, from 1.25 to 1.5 per cent in the May 2011 budget (CPSU, 2011a), and again to 4 per cent in November 2011, with exceptions for cultural institutions. This measure was forecast to save some \$1.5 billion over four years. Further cuts of 20 per cent, or \$710 million, to the capital budgets of government agencies were also announced (Hannon and Hepworth, 2011). The CPSU estimated that the combined cuts could result in up to 3,000 job losses across the APS (CPSU, 2011b). The new APS Bargaining Framework, and its own self-imposed fiscal constraints, shaped the government's response to the 2011-12 bargaining round. The enhanced collective bargaining rights under the *Fair Work Act*, the recognition of the enhanced rights and role of union workplace representatives under the APS Bargaining Framework, and the expiry of all APS agreements on 30 June 2011 provided the CPSU with a unique opportunity to mobilize in ways that had not been possible for over a decade. Two aspects of the 2011-12 round are particularly noteworthy – the role of the APSC in the bargaining process, and the innovative ways in which CPSU members took industrial action.

### **Role of the Australian Public Service Commission**

The APSC was involved at all stages of the agreement-making process in the 2011-12 bargaining round. If issues arose during the course of negotiations that could "substantially alter the outcome of the bargaining process", agencies had to inform the APSC (APSC, 2011). Prior to a proposed agreement being put to the vote, an agency was required to submit the proposed agreement to the APSC, and if inconsistent with the Bargaining Framework, the APSC was required to advise the agency to seek the approval of the Special Minister of State (APSC, 2011). The APSC was also responsible for ensuring that the government's 3 per cent remuneration policies were implemented. Agencies were also required to advise the APSC and the relevant agency minister "at the earliest possible time" if industrial action was being "engaged in, threatened, impending, or probable" (APSC, 2011).

The APSC could therefore intervene at every stage of the bargaining process, to the considerable frustration of many agencies and the CPSU. It was not uncommon during the 2011-12 bargaining round for the CPSU and the relevant agency to reach in-principle agreement only to have the APSC demand changes before it would sign off on the agreement on behalf of the Special Minister

of State. For instance, in November 2011 Safe Work Australia and the CPSU reached an agreement only to have the APSC refuse to sign-off on the deal. The CPSU alleged that the actions of the APSC constituted a breach of the good faith bargaining provisions of the *Fair Work Act* (CPSU, 2011f, 2011g). The APSC also refused an agreement that had been reached in principle between the parties in the Department of Defence because it failed to meet the APS Bargaining Framework's requirements. Therefore, it was not uncommon for agreements that were acceptable to the negotiating parties to be rejected by the APSC.

## Industrial Action

Since 1993, trade unions in Australia have been able to take lawful industrial action, known as protected industrial action, without incurring civil liability (Creighton and Stewart, 2010). From that time, the technical restrictions on this capacity for lawful industrial action have increased, and following the introduction of the Work Choices regime in 2005, Australia had some of the most restrictive strike laws in the common law world (McCrystal, 2010). These restrictions have largely been continued under the *Fair Work Act* (Creighton and Stewart, 2010). In broad terms, protected industrial action can only be taken in support of permitted claims for a single enterprise agreement, and only if any previous agreement has passed its nominal expiry date (*Fair Work Act*, sections 409(1) and 417). Before protected action could be taken, a secret (usually postal) ballot of eligible employees must be held to ascertain whether a majority of employees agree with the taking of industrial action, and, if so, what type of industrial action – for example stoppages, bans and so on (*Fair Work Act*, section 409(2)). Once these prescriptive requirements were satisfied, an employee bargaining representative must generally provide three days notice under section 414 of the *Fair Work Act* of an intention to take protected industrial action. Only after this notice has expired, and other technical requirements are satisfied, could the action be taken. These restrictions have made it more difficult for unions to take industrial action. These difficulties are compounded by the fact that under the *Fair Work Act* employees are not permitted to be paid, or to accept payment, for work stoppages caused by industrial action (*Fair Work Act*, Part 3-3, Division 9).

As the circumstances in which protected action could be taken became more limited, and high levels of personal debt inhibited many union members from striking, trade unions began to experiment with more creative strategies to maximize their bargaining power while minimizing the financial impact of protected industrial action on their members. During the 2011-12 bargaining round, the CPSU worked with its members to develop creative forms of protected industrial action. For example, in the Department of Defence, the CPSU organized for members to engage in one minute work stoppages. This meant that the

Department was required by law to deduct one minute's pay from the salary of each employee who participated in the industrial action (*Fair Work Act*, section 470(1)). The Department could not ignore this legal requirement, as it faced a maximum penalty of \$33,000 if it failed to comply (*Fair Work Act*, sections 539, 546). Further, individual Defence employees could not accept payment as this contravened section 473 of the *Fair Work Act* and left particular employees exposed to civil penalty proceedings (*Fair Work Act*, sections 539, 546). Nor was it open to individual payroll staff to ignore the requirement. The APS Code of Conduct, set out in section 13 of the *Public Service Act 1999 (Cth)*, required APS employees acting in the course of APS employment to "comply with all applicable Australian laws" (section 13(4)). Breach of the Code of Conduct by an employee could result in a sanction ranging from a reprimand to termination of the employee's employment (*Public Service Act 1999*, section 15). Given these legal requirements, the Department had no alternative but to calculate the time lost for each employee, an administrative nightmare.

Creative forms of protected industrial action were also undertaken in the Department of Immigration and Citizenship, where employees continued to perform their duties but refused to provide policy advice to the Minister. Under the *Fair Work Act's* payment rules, this protected action constituted a partial work ban (*Fair Work Act*, sections 471 and 472). The Department was faced with an invidious choice. It could give notice to the employees that it would not accept partial performance of work, or refuse to give the employees work and stand them down (*Fair Work Act*, section 471(4)). In the former case, the Department would need to calculate for each employee involved in the industrial action the percentage of time spent responding to questions or requests for advice from their Minister, and deduct a proportionate amount from the employee's pay (*Fair Work Act*, section 471(1)). Thirdly, the Department could do nothing, though this would involve conceding that the employees could take industrial action without losing pay, which would encourage the taking of future industrial action (*Fair Work Act*, section 471(8)). These examples illustrate how union members could undertake effective industrial action under a highly restrictive labour law regime.

## Outcomes

The 2011-12 bargaining round further demonstrated how the CPSU was creative in negotiating agreements that minimized losses in real wages and that contained reductions in employment conditions. The ability of the union to minimize cuts to conditions and pay is significant in the context of substantial cuts to jobs, pay and conditions evident in the public services at both federal and state levels in the United States (Greenhouse, 2011), the United Kingdom and Canada.

As bargaining progressed in 2011, the CPSU adopted a multi-pronged approach. It took advantage of the rules available to it under the *Fair Work Act*, and the opportunities that these rules provided to organize the union's membership to reject initial offers proposed by agency management. For a long time in many agencies, negotiations were deadlocked. Typically management would then put an agreement to the vote, and in most instances the CPSU would ensure that this initial offer was voted down by staff. The union succeeded in mobilizing some 120,000 of 167,000 APS employees to reject initial agreements put to them by agency management (CPSU, 2011p). The campaigns for "no" votes would often be followed by ballots authorizing the taking of protected industrial action, where the union was again required to mobilize its members to vote, followed by actual industrial action. We now turn to examine these tactics through the prism of negotiations at four key agencies: the Department of Immigration and Citizenship (Immigration), the Australian Customs Service (Customs), the Department of Human Services (Human Services) and the Department of Defence (Defence).

The CPSU organized "no" votes in response to initial offers and took industrial action in these key agencies to put pressure on agency managements to make concessions that could then be flowed onto other agencies with less bargaining power. Typical of this approach was the agreement reached in Immigration – an agreement that provided an influential template for other agencies. Immigration and border protection represented a highly sensitive topic for the Labor government and industrial action among Immigration staff applied considerable political and industrial pressure on the government to prevent disruptions in this sensitive portfolio area. The Immigration agreement offered three pay rises of 2 per cent per annum, though it achieved an overall pay increase of approximately 11 per cent. It did this by increasing the top pay increment for each classification by between 4 to 5 per cent, essentially creating a new pay increment for each job classification, and by abolishing the bottom increment for each classification (CPSU, 2011h). The Immigration agreement marked the beginning of an innovative approach to overcome the pay restrictions imposed by the APS Bargaining Framework. This involved adjusting pay classifications upwards by one pay increment and this restructuring of pay increments did not breach the government's prescriptive Bargaining Framework for the APS.

Customs represented another politically sensitive agency, and an agreement was reached in this agency utilizing elements of the Immigration model. An agreement was reached following protracted negotiations and a series of national work stoppages that included 24 hour strikes at international airports. The ultimate agreement involved an initial 4 per cent pay rise, followed in the second and third years by two per cent pay rises. Additional payments were made as a

result of changes to pay points in classifications and/or bonus payments for staff at the top of their pay scales. This produced an average pay increase of almost 11 per cent over the three year life of the agreement. CPSU President Michael Tull commented that:

This offer isn't everything our members asked for but in the current environment it is an important step forward. It is a significant outcome and should give hope to members in agencies such as DAF [Department of Agriculture and Fisheries], Defence, BoM [Bureau of Meteorology] and the ATO [Australian Taxation Office] who are also fighting for a better deal (CPSU, 2011i).

This approach to bargaining demonstrated the CPSU's agenda to achieve concessions in agencies in politically sensitive areas of service delivery and to then flow these achievements onto other agencies. For example, Human Services, an agency dealing with social security and medicare payments, and which employed approximately 37,000 staff, reached an agreement in late November 2011 following a period of intense campaigning by the CPSU. Negotiations were hard fought – management put an offer to the union in June 2011 which provided for incremental salary advancement of 2-3 per cent, subject to staff being rated as fully effective, or higher, by their supervisor during performance appraisals, an increased working day of 7.5 hours, and more flexible rostering and scheduling arrangements regarding hours of work. The CPSU claimed that these arrangements would result in either a wage freeze, or real wage cuts for many employees (CPSU, 2011j). When Human Services proposed putting it to a vote of all employees within the agency, the CPSU mobilized its membership within the department to vote "no". The union's campaign proved successful and in the September 2011 ballot, 77 per cent of employees voted, with 73 per cent voting "no" (CPSU, 2011k).

The CPSU used this "no" vote to bring management back to the bargaining table, and it used the breakthrough in Immigration as a model to deliver both acceptable pay rises to members and to comply with the Labor government's Bargaining Framework. Agreement was reached in late November 2011 that provided for a 3 per cent pay rise once the agreement was approved by Fair Work Australia, 3 per cent on 1 July 2012, and 3 per cent on 1 July 2013. The agreement delivered pay rises closer to 11 per cent by restructuring salary points within existing classifications. Those on the top pay increment within each classification who were rated effective, or higher, during performance appraisals would also receive an additional \$650 payment. In addition, two \$500 payments in recognition of the substantial restructuring taking place in Human Services were made – one following the approval of the agreement and the second to be paid 13 months later. These salary increases, additional pay increments and non-salary payments provided an average increase in remuneration of 10.8 per

cent over the life of the agreement. In return, the employer obtained a revised performance management system, increases in working time per week, and tighter rules around the taking of personal leave (CPSU, 2011l).

Bargaining in Defence was similarly hard fought. In April 2011, Defence put forward the standard Government offer of a 3 per cent wage increase per annum, along with reductions in Christmas close-down leave and Defence reservists leave. Defence also wanted to tighten up on the taking of flex time, or time off when staff work additional hours, and access to travel allowances (CPSU, 2011m). The CPSU rejected this initial offer, though Defence followed the example of other agencies and put the agreement to a ballot of all employees in June 2011, (the first time in 12 years that Defence had put an agreement to a vote of employees without union support). The CPSU campaigned actively for a “no” vote, highlighting that employees were being asked to take a cut in real wages, as well as cuts to protections around consultation and redundancy entitlements (CPSU, 2011n). The CPSU campaign was successful, with 72.5% of employees who voted rejecting the initial Defence offer.

Over the next few months negotiations were deadlocked. The CPSU initiated industrial action that included one minute stoppages and one hour stop work meetings, and tried to use the Immigration model as a circuit breaker. On the employer side, matters were complicated when the Defence Force Remuneration Tribunal (DFRT), the body responsible for setting remuneration and related conditions for serving Australian Defence Force (ADF) personnel, upheld the Government’s claim and granted a 9 per cent pay increase over three years (DFRT, 2012). Historically, efforts were made to align pay increases awarded to serving Australian Defence Force (ADF) personnel and those awarded to APS employees working in Defence. In November 2011, Defence tried to break the deadlock by putting an agreement to ballot two weeks before Christmas. While the offer was an improvement, containing front loaded pay increases, the CPSU took the view that the agreement did not go far enough and again mobilized union members to vote “no”. This campaign was also successful, with 61 per cent of Defence employees who participated in the ballot voting “no” (CPSU, 2011o). A third agreement was put to the vote in March 2012. The CPSU did not support this agreement, but significantly did not organize against it. The proposed agreement provided for a front loaded pay increase of 6.5 per cent on commencement, and 2.5 per cent on 1 July 2013. These gains were offset by the loss of one day of leave at Easter. The agreement was ultimately voted on and accepted by a majority of Defence employees (CPSU, 2012).

The bargaining process in 2011-12 required the CPSU to mobilize its workplace delegates and union members to reject initial offers by management, to undertake industrial action, and to resist cuts to real wages and conditions proposed by

agency management and overseen by the APSC. The union believed that the outcomes from the bargaining campaign were largely positive (CPSU officials, 2010, 2011). Union recruitment activities over 2011 resulted in over 8,200 new members, a net gain of over 500 members. The union also recruited almost 1,000 new workplace delegates and provided training to some 650 workplace activists (CPSU, 2011c). There was some progress, albeit limited, on reducing wage dispersion across the APS, with wages in a number of agencies in the bottom 5 per cent enhanced and brought closer to the APS average. The union also increased the activism of its workplace delegates in the bargaining process and enhanced communications with members through workplace meetings, telephone and internet communications, and emails. The union aimed to build on this level of member activism by providing increased resources and training to workplace delegates following the bargaining round (CPSU, 2011d).

## Assessment

The CPSU developed its capacities during the 2010 and 2011 period in distinctive ways. While the union came from a background in the 1970s and 1980s of fragmented and unevenly organized unions in the public services, it emerged in the 1990s and 2000s as a union able to challenge the state as employer. The accomplishment here was to renew the organizational base and structure of the union, shifting a formerly centralized and relatively passive office-based union structure in a more bottom-up direction (see Fairbrother *et al.*, 2012). While novel developments in Australia, they are part and parcel of similar steps in the state sector in other countries during the 1990s and 2000s (see Fairbrother, 1994 for similar developments in the United Kingdom). Such developments provided the foundation for the emergence of activist leaderships in a number of unions across the public services.

Under the conservative Howard government, individual discretion (freedom) was celebrated, reflected in legislation and the reorganization of the state. A change of government, in the direction of a more socially aware but market focused Labor government from 2007 saw continuing organizational fragmentation and agency by agency bargaining across the APS. Nevertheless, a new legislative environment that placed a renewed emphasis on collective bargaining rights and increased recognition of the roles of union bargaining representatives, alongside changes in union strategy that emphasized a more campaigning approach, created the conditions for union renewal and a more active form of trade unionism. In the APS, the CPSU was able to effectively mobilize union resources and to draw on lessons gained from a decade of conservative government legislation hostile to union activity. The union also developed new capabilities to mobilize its members to resist management offers the union

viewed as inadequate, and to take industrial action that minimized the loss of income to members but maximized the level of disruption experienced by government agencies. The union also focused on winning bargaining concessions in politically sensitive government agencies and then flowing these concessions to other agencies.

The analysis presented here has important implications for the ways in which we assess state trade unionism in the modern period. As indicated above, the CPSU, as the major union representing public service workers in the Australian Commonwealth, undertook a long-term strategy of reorganization and capacity building focused on standard and traditional union objectives. The point of noting union purpose in these ways is to highlight the novelty of the process of union building that is underway (see Lévesque and Murray, 2002; Bach and Kessler, 2012). In pursuit of these objectives, the union was able to frame its goals in relation to the state as employer, thereby laying the foundation for members to pursue their material interests as employees in exploitative sets of relations. Drawing on past experiences as state workers, these union members promoted the collective capacities of the union. They were pro-active (agenda setting) and solidaristic (based on forms of collective organization). Theoretically it can be noted that trade union renewal is a process where union leaders and activists make decisions to rebuild the collective base of the union, as well as taking steps to realize associated capacities. Thus, renewal is not a one-dimensional process of organizational change (Bach and Kessler, 2012); it is a process of building collective capacity to exercise union power. Nonetheless, as with all change, it often requires a “crisis” situation, a moment of heightened threat to the material well being of workers to focus the process of union building. Renewal therefore is an on-going and uneven process.

Union renewal draws attention to organizational change, capacity building and a refocus on union purpose. Such features characterized many state unions through this period, and particularly those in the public services (Fairbrother and Griffin, 2002). These unions have challenged and questioned governments as employers, highlighting the tensions of populist intervention and authoritarian populism, depending on the political complexion of political parties in office (Bach and Kessler, 2012). There has been a “drift to social engineering” (Standing, 2012) in many liberal democracies, where governments seek to define and determine policies in non-deliberative ways, and without challenging popular and often extremely divisive understandings about the economic and social composition of modern liberal democracies. To address these developments, an adequate analysis starts from a recognition of the ways unions and workers are caught between pressures to defend the status quo and pressures to develop and define alternative ways of looking at the state.



## Conclusion

While Australia escaped the harsher aspects of the global financial recession, public services have experienced financial stringency through the imposition of increased efficiency dividends and reduced capital expenditure in the post-GFC period. It is in this context that public sector workers and unions have responded to state restructuring by involving workplace representatives more actively in union organizing and collective bargaining. The CPSU adopted a range of innovative industrial strategies to enhance its bargaining power and effectiveness during the 2011-12 bargaining round, such as one minute disputes, to ensure maximum administrative disruption and minimum financial cost to members. The union was also innovative in the changes to conditions it negotiated, such as the abolition of the lowest classification levels and support for new pay points above the top classification. These initiatives limited reductions in real wages while enabling agencies to remain within the Labor government's bargaining framework for the APS. Increased activism, including a greater willingness to undertake industrial action, a renewed focus on strengthening workplace representative structures, and agreements that minimized concessions also led to increased union membership. The challenge for the CPSU is to sustain its focus on workplace activism in an environment of financial stringency as the Labor government focuses on returning its budget to surplus at the expense of both public services and public sector jobs.

The conditions for the relative success of the union in the harsh post GFC climate involved a combination of organizational reform towards activist delegate structures. However, as demonstrated, this measure is not sufficient in its own right, and it was important for the union to increasingly expand and exercise its capacities as a campaigning union. It is in this respect that the process of union renewal is an on-going process, one that ebbs and flows. Nonetheless, when unions face the wash of major events, such as the post GFC environment experienced by APS employees and their union representatives, then the challenge is to exercise collective capacity in ways that involve members and give voice to their concerns. In addition, the more benign legislative environment that supported union collective bargaining and the role of union workplace delegates played a critical role in facilitating the union's industrial campaigns and its ability to mobilize union members. The challenge is to maintain this capacity and further extend the union's capacities.

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## SUMMARY

### The Aftermath of the Global Financial Crisis and Union Strategies in the Australian Public Service

The Australian Labor government's recognition of collective bargaining under its *Fair Work Act 2009*, and its efficiency drive from late 2011 across the Australian Public Service (APS), presented the Community and Public Sector Union (CPSU) with an opportunity to explore means of union renewal following a decade of conservative governments focused on union exclusion. An expanding budget deficit in 2011 placed considerable financial constraints on Australian government revenue. The Labor government increased the annual "efficiency dividend", or across the board cuts in funding, from 1.5 per cent in May 2011 to 4 per cent in November 2011 as it attempted to achieve a budget surplus. This placed considerable pressure on

agency management to remain within tight constraints on wage increases and to find budget savings, resulting in growing job losses from 2011. There was also considerable central oversight over bargaining outcomes throughout this bargaining round, with the Australian Public Service Commission (APSC) involved at all stages of the agreement-making process, to the frustration of many agencies and the CPSU. Nevertheless, throughout the 2011-12 bargaining round, the CPSU worked with its members to develop creative forms of industrial action, such as one minute stoppages in the Defence department. The union also mobilized an overwhelming majority of APS employees to vote “no” in response to initial offers put by agency managements. In addition, the CPSU focused on winning bargaining concessions in politically sensitive government agencies and then flowing these concessions to other agencies. Typical of this approach were the agreements reached in the Immigration department and Customs agency. Union recruitment activities over 2011 resulted in a substantial rise in membership and enhanced communications with members through workplace meetings, telephone and internet communications, and emails. Such union initiatives highlight the potential for enhanced union capacities and mobilization during a time of growing austerity.

KEYWORDS: union renewal, union capacity, efficiency savings, global financial crisis, industrial action

## RÉSUMÉ

### Les conséquences de la crise financière internationale et les stratégies syndicales dans le secteur public australien

Le Community and Public Sector Union (CPSU) australien a trouvé dans les politiques du gouvernement travailliste un tremplin pour enclencher un mouvement de renouvellement syndical. Deux facteurs contextuels ont contribué à cet essor. D'une part, le *Fair Work Act* de 2009 a redonné aux organisations syndicales un droit de cité dans les lieux de travail en favorisant la négociation collective comme méthode de détermination des conditions de travail. D'autre part, cet élan favorable a trouvé une impulsion dans les politiques d'austérité mises en œuvre par le gouvernement travailliste afin de mater le déficit budgétaire provoqué par la crise financière de 2008. Le gouvernement travailliste a d'abord exigé des compressions des dépenses de 1,5 % pour ensuite les hausser à 4 % en novembre 2011. Le gouvernement fédéral a alors donné à la Australian Public Service Commission le mandat de superviser les négociations salariales de 2011 en même temps que diverses mesures d'austérité se soldaient par des coupures de postes au sein de la fonction publique fédérale australienne. Dans ce contexte, le CPSU a développé des stratégies innovatrices visant à faire pression sur les directions des agences et sur le gouvernement central. Cet article documente plusieurs de ces actions dans le but d'évaluer dans quelle mesure elles ont contribué au renouvellement de l'action syndicale. L'analyse des matériaux suggère que ces actions ont contribué à faire de la campagne de recrutement de nouveaux membres mise en œuvre en 2011 un vif

succès. L'utilisation des nouvelles technologies de communication, l'organisation de rencontres avec les membres sur les lieux de travail et des moyens de pression novateurs ont permis de rehausser les capacités d'action de ce syndicat. Le cas étudié démontre que même dans un contexte d'austérité budgétaire, les organisations syndicales peuvent améliorer leurs moyens d'action et de mobilisation.

MOTS-CLÉS : renouveau syndical, action syndicale, réduction des dépenses, crise financière mondiale, moyens de pression

## RESUMEN

### Las consecuencias de la crisis financiera internacional y las estrategias sindicales en el sector público australiano

La Community and Public Sector Union (CPSU) australiano ha encontrado en las políticas del gobierno laboralista un trampolín para iniciar un movimiento de renovación sindical. Estos factores contextuales han contribuido a este desarrollo. De un lado, el Fair Work Act de 2009 ha devuelto a las organizaciones sindicales un derecho de ciudadanía en los lugares de trabajo favoreciendo así la negociación colectiva como método de determinación de las condiciones de trabajo. De otro lado, este impulso favorable ha encontrado un apoyo en las políticas de austeridad puestas en obra por el gobierno laboralista con el fin de controlar el déficit presupuestal provocado por la crisis financiera de 2008. El gobierno laboralista ha primero exigido la compresión de 1,5% de los gastos para luego alzarlos de 4% noviembre 2011. Luego, el gobierno federal ha dado a la Australian Public Service Commission el mandato de supervisar las negociaciones salariales de 2011 al mismo tiempo que diversas medidas de austeridad se tradujeron en supresión de puestos dentro de la función pública federal australiana. En este contexto, la CPSU ha desarrollado estrategias innovadoras con miras a hacer presiones sobre las direcciones de agencias y sobre el gobierno central. Este artículo documenta varias de estas acciones con el objetivo de evaluar en qué medida estas han contribuido a la renovación de la acción sindical. El análisis de los materiales sugiere que estas acciones han contribuido al éxito rotundo de la campaña de reclutamiento de nuevos miembros realizada en 2011. La utilización de nuevas tecnologías de comunicación, la organización de encuentros con los miembros en los lugares de trabajo y los medios de presión innovadores han permitido de realzar las capacidades de acción de este sindicato. El caso estudiado demuestra que incluso en un contexto de austeridad presupuestal, las organizaciones sindicales pueden mejorar sus medios de acción y de movilización.

PALABRAS CLAVES: renovación sindical, acción sindical, reducción de gastos, crisis financiera mundial, medios de presión