

NATIONAL LEAGUE OF CITIES
SPECIAL WORKSHOP

COMPARABLE WORTH
MARCH 25, 1985

The comparable worth concept frequently serves as the basis for civil rights lawsuits against employers or state legislation designed to require equal pay for work requiring equal skill and responsibility. The primary objective of these efforts is to eliminate sex-based discrimination in the wages paid to categories of employees which are primarily made up of women. Virtually all efforts to implement the comparable worth doctrine have been directed at state and municipal employers in the form of pay equity lawsuits or state legislation mandating pay equity.

The Supreme Court and Congress have yet to directly address the issue. However, an estimated 20 states have enacted state legislation containing comparable worth language which applies primarily to states and municipalities and numerous lawsuits have been filed against states and localities seeking to ensure implementation of the comparable worth doctrine. Public sector employers have been the primary target of these efforts primarily because the wage classification systems of states and localities are public information while those of private sector employers are considered to be proprietary information which is not accessible to the public.

FEDERAL STATUTES

The federal laws which govern the evolving comparable worth doctrine are the Equal Pay Act and Title VII of the Civil Rights Act of 1964.

Equal Pay Act of 1963

The Equal Pay Act, which is a part of the Fair Labor Standards Act, provides that:

No employer having employees subject to any provisions of this section shall discriminate, within an establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system;

(iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee. 29 U.S.C. Sec. 206(d)(1) (emphasis added).

In addition to the express exemptions from the Equal Pay Act (e.g., wage differentials resulting from a seniority system), the law has been narrowly construed by the courts as applying only to employees whose work is "substantially equal." As a result, it cannot be used to challenge sex-based discrimination in wages for work which is comparable but not the same as other work. For example, the Equal Pay Act applies to the wages paid to persons who perform closely related jobs but not to persons who perform different jobs which involve the same degree of skill, effort, and responsibility.

Title VII of the Civil Rights Act of 1964

The Civil Rights Act of 1964 includes the following provisions:

It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin. 42 U.S.C. Sec. 2000e-2(a)(1) and (2) (emphasis added).

This law has been construed by the Supreme Court in County of Washington v. Gunther, 452 U.S. 161 (1981) as not being limited by the Equal Pay Act to just those employment practices which apply to employees engaged in substantially equal work. in the Gunther case, the Supreme Court opened the door to comparable worth claims under Title VII in cases of intentional discrimination but did not establish whether or not Title VII requires employers to pay equivalent wages for comparable work.

JUDICIAL DECISIONS ON COMPARABLE WORTH

In American Federation of State, County and Municipal Employees v. State of Washington, 578 F.Supp. 846 (W.D. Wash. 1983), a federal district court found the State of Washington liable for back pay of an estimated \$500 million to \$1 billion to state employees who were classified as members of job categories that were predominantly (i.e., 70 percent) made up of women. The court relied primarily on studies, conducted by the state, which showed a 20 percent disparity in the compensation paid to employees in predominantly female job classifications and that paid to employees in predominantly male job classifications.

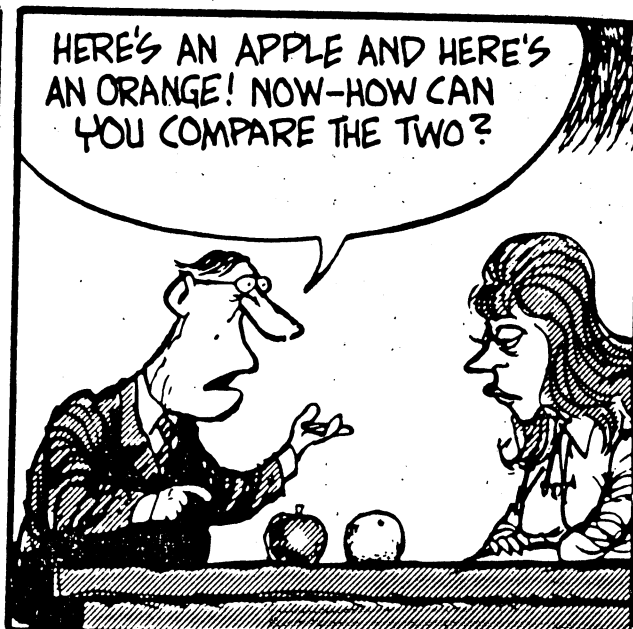
In the AFSCME case, The court found discriminatory intent on the part of the state, relying on:

"the historical context out of which the challenged failure-to-pay arose; obstacles that confronted employees in the predominantly female job classifications and subjective employment practices utilized by the Defendant resulting in a pattern disfavoring those employees; the foreseeable adverse impact of those practices; the proposed increase in pay to the Plaintiffs since filing of the instant suit; and recognition of disparate treatment by responsible State officials."

The AFSCME case has been appealed to the Court of Appeals for the Ninth Circuit. That court recently ruled in the Spaulding v. University of Washington (1984) case that a mere showing of wage disparity between comparable jobs does not necessarily establish a case of sex-based discrimination under Title VII.

STATE LAWS

Fourteen states have enacted pay equity laws which prohibit sex-based discrimination in the payment of wages. States prohibiting unequal compensation for comparable work include: Alaska, Arkansas, Georgia, Idaho, Kentucky, Maine, Maryland, Massachusetts, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee (municipalities are exempt), and West Virginia. Additionally, six other states (California, Iowa, Minnesota, Montana, Oregon, and Washington) have recently enacted similar laws which apply primarily to public employers.



Daily News - 2/12/85



City of Cambridge

2.

IN CITY COUNCIL

May 20, 1985

COUNCILLOR WOLF

- WHEREAS: "Comparable worth" is a concept that states that employers shall pay equal salaries for work that requires comparable skill, effort, and responsibility; and
- WHEREAS: Historically, the work seen as "women's work" has been undervalued and underpaid; and
- WHEREAS: The Cambridge City government has shown in many policies and actions that it does not wish to be a party to discriminatory actions; and
- WHEREAS: The City Manager during the 1985 budget hearings expressed a willingness and interest to have his office coordinate the work of the Personnel Office, The Cambridge Commission on the Status of Women, and any other appropriate City office to ensure that Cambridge City personnel are paid comparable salaries for comparable work; therefore, it it
- ORDERED: That the City Manager initiate a study of the appointment and salary structure within city government to measure whether it is discriminatory in any way; and be it further
- ORDERED: That the City Manager report back to the City Council as to the progress of this study and then his final conclusion.

In City Council May 20, 1985.
Adopted by the affirmative vote of 8 members.
Attest:- Paul E. Healy, City Clerk.

A true copy;

ATTEST:-

A handwritten signature in cursive script, reading "Joseph E. Connarton".

Joseph E. Connarton, Deputy City Clerk.

Order # 2

Ex 193

C. Wolf order re: City Manager to initiate a study of the appointment & salary structure within City government to measure if it is discriminatory in any way & report back to the Council his progress & final conclusions.

In City Council,

May 20, 1985

C.W. Order Adopted
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