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PAY EQUITY AND THE PRIVATE SECTOR: A PROPOSAL FOR LOCAL IMPLEMENTATION IN RICHMOND

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"Pay equity" or "comparable worth" are terms that have come to stand for the notion that people should be paid equally for jobs of similar skill levels, training requirements, and responsibility, regardless of their race, sex, creed, or color. Comparable worth has been called the job issue of the eighties. The first half of the decade witnessed a surge of activity around the issue in the courts, in legislative arenas, and at the bargaining table.

Although two of the original lawsuits establishing the grounds for comparable worth involved private-sector employers,¹ most activity to date has dealt with public-sector employees. Recently, however, the notion of pay equity has gained renewed attention in the private sector as well. As economic shifts diminish the number of well-paid manufacturing jobs, lower-paid jobs in services and related sectors, traditionally employing high concentrations of women, become relatively more important to households and communities. The pressure is growing for private as well as public employers to redress discriminatory wage scales that have evolved in the workplace.

The argument over pay equity is very emotional. Proponents on both sides display dramatic statistical evidence supporting their positions. Dire predictions of massive shocks to the economy if employers have to bear the cost of more equitable compensation are countered by studies showing that comparable worth can be implemented at low or no excess cost to the employer. The moral issue is whether pay equity is an obligation in a nation with seemingly contradictory commitments to equal opportunity and free enterprise. The reality is that pressures for wide-spread pay equity are intensifying as more people become aware of the problem and seek remedy in their own workplace.

Over 30 state and numerous local public employers have adopted the policy of pay equity for their own employees. Their experience in implementing pay equity can be used to ease the transition to pay equity for private employers. By establishing equitable benchmarks in local wage surveys and offering technical assistance with implementation plans on an individual basis for employers, the public sector can potentially save the private sector millions of dollars in bargaining and litigation costs.

The following study examines how a local government could implement a program to assist private employers in establishing pay equity. We review the legal history of comparable worth, and analyze common arguments both against and for pay equity. A hypothetical case study based on the City of Richmond, California, examines actual needs, barriers, and vehicles for the

implementation of such a plan.

Legal Tenets of Pay Equity

Private employers have been investigating issues of pay equity since the early 1900s. At the turn of the century, employers reviewed women's wages for a subjective evaluation based on need (California Commission on the Status of Women, 1981). The issue has continued to be addressed in the public and private sectors throughout this century in the United States and abroad.

The legal basis for comparable worth in this country is more closely related to Title VII of the Civil Rights Act of 1964 than it is to the Federal Equal Pay Act of 1963. Title VII bars employment discrimination based on race, color, religion, sex, or national origin. The act specifically forbids discrimination in hiring, discharge, compensation, terms, conditions, and privileges of employment. Today's Affirmative Action plans for both public and private sector employers are based on Title VII.

Until 1982, pay equity suits were litigated under the Equal Pay Act. This Act offers effective remedy to sex-based pay discrimination where men and women perform the same work. However, it can do little to resolve the pervasive problem of wage discrimination in sex-segregated jobs, where men and women perform different work (Heen, 1984). The 1982 Supreme Court ruling in *County of Washington v. Gunther*² opened the door to legal challenges based on sex-based wage discrimination in jobs that are similar, but not strictly equal, under Title VII of the 1964 Civil Rights Act. While Gunther is largely responsible for the groundwork for comparable worth, the decision left open the question of a standard of "comparability".

Because discrimination as it relates to comparable worth (as well as other elements protected under Title VII) was not defined in the statute, the courts have been primarily responsible for articulating the parameters of wage-based discrimination on a case-by-case basis. Under traditional Title VII analysis, there are three ways of establishing a discrimination claim: the showing of overt discrimination; the doctrine of "disparate treatment"; and the doctrine of "disparate impact". The disparate treatment doctrine allows a plaintiff to prove discrimination by using circumstantial evidence of the employer's conduct: intent to discriminate is the crux of this issue. Under the disparate impact presumption, a plaintiff can charge discrimination from statistical evidence showing that an employer's policies have a disproportionately negative impact on the plaintiff's group: impact, not intent, is the crux of this issue.³ In both cases, the employer can rest its defense on the grounds that the discrimination is warranted by business necessity (Heen, 1984).

Employers of appreciable size usually use one of two basic methods to establish wage scales: a "market rate system" or a "job evaluation system." Under a market rate system, the employer relies on salary surveys of other employers in its general location to determine the prevailing market rate paid to employees in various jobs. The employer then establishes his own hierarchy of wages, based directly on these market rates. Job evaluation, a technique long used by employers, weights jobs according to a predetermined set of factors (usually responsibility and working conditions) and assigns a quantitative rating to evaluated positions.

Pay equity proponents used the 1983 decision by Washington State Judge Tanner in *AFSCME v. State of Washington* as the grounds for using job evaluation results as a method initially for analyzing a wage structure for discrimination and then for establishing an "equitable" pay scale. Prior to the 9th Circuit Court's ruling overturning this decision in September of 1985, job evaluation results left employers open to charges of discrimination. Evidence that such discrimination exists can be based on the job evaluation systems that employers use.

The recent reversal of the *State of Washington* case is under appeal to the Supreme Court of the United States. Regardless of the legal outcome, employers are well aware of the cost of a legal or bargaining battle over outright discrimination in pay patterns as shown in job evaluation studies. When the City of San Jose, California, conducted a job evaluation, substantial pay differences between male- and female-dominated jobs was revealed. The City eventually settled, raising the wages of certain female-dominated jobs by as much as 30%. The study cost the City \$500,000, and the resulting strike, litigation, settlement, and back pay cost the City \$4.5 million.

Because of the potential strike dangers associated with a published job evaluation system, even employers who are already using a job evaluation system have an incentive to switch to a market rate system. However, historical discrimination against women in the wage market may turn a neutral compensation policy such as a market rate system into one with a discriminatory impact.

Despite the legal setbacks to pay equity, the extent to which the concept has taken hold suggests that it is here to stay. Many public jurisdictions and some large corporations, including AT&T, have taken steps to eliminate sex-based wage disparities between comparable positions. In many areas, these steps have been taken in the absence of formal job evaluation studies. The California State Employees Association, for instance, won wage increases for many clerical and other positions held predominately by women, on top of general increases for all state employees, in their last two collective bargaining agreements. In New Jersey, at the

recommendations of an executive task force established to study the issue, steps are being taken to eliminate the five lowest wage grades in the state's compensation system (held mostly by women and minorities), as well as to upgrade the salaries of all workers in these categories. Thus, despite opposition, the trend toward remedying this type of wage discrimination has clearly begun. The next section looks at some of the most common arguments used by opponents of pay equity.

Arguments and Barriers to Private Sector Pay Equity

Publications ranging from the *New York Times* to California's State Chamber of Commerce newsletter, *Alert*, have presented arguments against pay equity. Counter arguments exist, but are less commonly covered. The following section presents the most common issues and arguments in the comparable worth debate.

1. One barrier to achieving pay equity in the private sector is the lack of consensus on means by which to achieve the goal.

In addition to legislation enforcing pay equity standards, other important approaches include pay equity adjustments won at the bargaining table. Leaders of the fight for comparable worth believe that each firm should have an individual, unique approach to pay equity. Strict, legislated market rate guidelines are not advocated by many of the proponents of pay equity. In fact, opinions vary widely on how comparable worth could best be implemented in a system in which the lack of consensus is a major barrier to further supporting legislation.

2. Employers argue that comparable worth mandates would interfere with their ability to run their business in the most efficient and productive manner.

An employer can justify a neutral employment policy (one without discriminatory intent) that has a discriminatory effect by showing that the policy "bears a demonstrable relationship to successful performance of the jobs for which it is used." Thus, if pay equity were to truly interfere with productivity, it would not be mandated for that employer.

3. Another argument is that comparable worth "freezes" all salaries by creating a "master plan" of salaries. Thus, the money value of one job could not be changed without upsetting all other jobs.

The counter response argues that employers already rely on a local "master plan" if they rely on local market rates. Indeed, employers are turning increasingly to the "market rate system" to absolve them of discriminatory intent, which has already caused some to be liable for large sums of money in back pay. Recent court rulings cast some doubt on the legal basis of discriminatory evidence, but many may choose to play it safe until the ruling is

clarified.

4. In addition to the objections to pay equity presented above, California's Chamber of Commerce newsletter *Alert* suggests that the unions would be opposed to freezing salaries to a master plan.

However, unions have no complaint against Title VII. Title VII specifically allows for collectively bargained wage settlements to stand, so long as they do not intentionally discriminate against protected classes (i.e. women, minorities, the disabled).

The AFL-CIO itself in 1981 adopted a resolution supporting the correction of sex-based inequities. The resolution contained three statements:

- a) Treat sex-based inequalities in contract negotiations like all other inequalities, which must be corrected;
- b) Initiate joint union-worker pay equity studies;
- c) Take other actions as deemed appropriate to correct pay inequalities based on gender differences.

Not only do these statements frame the union's support of comparable worth in theory, but the second statement clearly articulates a course of action. This urgently highlights the protection a local government could offer its private employers by incorporating comparable worth standards into local salary surveys.

5. Employers argue that there is no inherent "worth" to any job; that a job is "worth" what it brings in the market.

Job value has traditionally been determined through job evaluations. Indeed, it was employers, not unions, which initially pushed the concept of job evaluation in order to compare unlike jobs and establish appropriate pay rates. It has only been since workers have begun using job evaluations offensively, as a means of eradicating discrimination in pay and hiring patterns, that employers have disowned their own device for measuring the value of jobs and have made the "apples and oranges" argument. (Newman, et al., 1984.)

6. One of the most powerful arguments against comparable worth is the inflationary effect opponents believe it would have on the economy. Daniel Glassner, consultant to Hay Associates, the oldest and most established pay analysis firm, states that if comparable worth were mandated for all establishments for a single year, the inflation rate of the national economy would rise by 8.5%. The impact, he believes, would be similar to the 1973 Arab oil embargo. (Pierce, 1984.) Neal Pierce suggests that even in the public sector, a broad-based movement to pay equity could result in voter retaliation in Proposition-13-type legislation.

The costs involved in eradicating pay discrimination have been clearly articulated. The direct costs of creating, implementing and monitoring a new pay scale coupled with backpay and potential

litigation and strike expenses would ripple throughout the economy and increase the cost of other goods and services. Labor costs would be higher, and the practices of exporting jobs and using poorly paid subcontractors would allegedly become more common.

The issue has been too little studied so far to bear out conclusively these warnings. The National Committee on Pay Equity argues that there is no evidence that jobs will be lost, and states that employers will recoup increased costs through increased productivity, morale, and lower turnover. A compensation consultant says that comparable worth plans installed by his clients cost a maximum of two percent of payroll (Trost, 1985). Another study by the National Committee on Pay Equity found that the cost of implementing pay equity in the State of Minnesota over three years was approximately four percent of the State's total payroll budget (National Committee on Pay Equity, 1984). Furthermore, timely governmental action by state and local governments to assist the private sector's transition to non-discriminatory pay scales could substantially cut the costs of litigation.

These arguments fail to consider the effect that the injection of money into lower-class households would have on the economy. Most writers believe it would cause inflation to rise, but no study on the effect has been completed to date. No definitive statement on the effects of pay equity on the larger economy can be made until adequate studies are completed. The only definitive statement on the issue that can be made at this time is that cost is not a defense to illegal conduct under Title VII -- neither cost to the employers nor cost to society. If employers have acted unlawfully and have unjustly benefitted, their employees should not have to bear the burden of these unlawful actions (Newman, et. al, 1984).

Richmond, California and Comparable Worth in the Private Sector

The issues and problems of a comparable worth policy are revealed in a look at Richmond, California below. In Richmond, the likelihood of the City adopting a comparable worth plan is increasing as the issue is brought to the bargaining table. The union representing city employees in Richmond, the Service Employees International Union, recently completed a study which disclosed substantial pay discrimination in female-dominated jobs. As a result of this finding, the union will bring the comparable worth issue to the bargaining table in the near future. Assuming that pay equity is achieved at City Hall, it, like other Affirmative Action mandates, will be incorporated into the City's recently adopted Affirmative Action Plan. Pay equity policy could thus be extended to private firms doing business with, or receiving assistance from, the City through the Affirmative Action Plan.

In the following sections we reflect on the effects of extending pay equity policy to the private sector in Richmond. We consider the impact on individuals, the community, and private employers. We discuss financial and political barriers to the implementation of the policy. We end with a proposal for the implementation of a comparable worth policy in Richmond.

Impact of Pay Equity on Individuals and Families in Richmond

Local policy extending pay equity standards into the private sector would benefit women and men living in Richmond and working in job categories held predominantly by women. The benefit to Richmond's female population is of particular importance, since women in the city constitute a group with especially pressing needs.

Although a broad range of job classifications is included in a comparable worth study, most of the positions that are upgraded as a result of the study are in occupational categories traditionally dominated by women. Office workers in particular are consistently found to be underpaid in comparable worth studies.

Occupational growth trends in Richmond between 1970 and 1980 show that local employment is heavily concentrated in the traditionally female-held job categories of clerical work and sales.⁴ Once a city of heavy manufacturing, Richmond has experienced deindustrialization while the Bay Area has become prominent as a leading Pacific Rim financial and service center. As a result, not only is the female-dominated occupational category of "Technical, Sales, and Administrative Support" the dominant type of employment in the city, but it shows the fastest growth and greatest absolute gains over the course of the last ten years.

Over three-fourths of Richmond's clerical workers are female. Indeed 5,381 women, fully 40.2% of the female labor force, listed as their occupation some type of clerical work in the 1980 Census. Most of the occupational categories that need to be upgraded according to the Richmond City Hall comparable worth study are clerical. Therefore, a significant portion of Richmond's workers would be affected by the extension of the public sector comparable worth policy to the private sector.

As poverty among females in Richmond is much higher than in the region or the state, broad pay equity for clerical workers would have significant impact on improving the lives of individuals and families throughout the city. Fully 36 percent of all female-headed households in Richmond are in poverty as compared to 26 percent in the Bay Area, and to 8 percent of male-headed households in the City. A comparison of median incomes between men and women indicates that women in Richmond make only \$.48 for each dollar earned by men. A policy that could raise the wages of a significant proportion of clerical workers could have a positive impact not only on individuals and families, but also on

regional growth and consumption levels and thus economic growth.

Administration of a Pay Equity Policy in Richmond

A policy of comparable worth for the public or private sector in Richmond would be administered through the Affirmative Action Plan of November, 1984. An objective of the plan is to ensure that there is no discrimination practiced in city employment or in employment in firms which receive public money, other forms of public aid, or city contracts. The coverage of the Affirmative Action Plan extends to all developers, owners, employers, commercial tenants, and service contractors who are either engaged in a city-owned project or receiving direct or indirect city financial assistance as follows:

- City Lease
- Land disposition agreement in a city-assisted project
- Grant
- Loan or loan guarantee
- Other forms of subsidy, including industrial revenue bonds; lease revenue bonds, tax allocation bonds; or assessment district bonds.

Richmond's Human Relations Director is charged with the responsibility of implementing and enforcing the Affirmative Action plan. Enforcement of the plan is the responsibility of the Affirmative Action Committee, an advisory body to the City Council. The Human Relations Director serves as staff to this Committee. The Committee hears complaints regarding provisions of the plan and enforces compliance. Penalties for non-compliance range from termination of a contract to a fine of \$1000 per day.

Barriers to Implementing Pay Equity in Richmond

The City of Richmond has severe economic problems. Unemployment, at 10 percent, is higher than typical for the region. The City itself is financially strapped by a decline in its traditional manufacturing base and by large court awards to victims of police brutality in the last decade.

The City of Richmond is actively seeking to encourage economic development. Various forms of assistance, including industrial revenue bonds and tax abatements, are offered to attract industries to the city. The positive effects of a mandated pay equity policy in conjunction with economic development aid are unmistakable. The problem, however, would be whether the effect of the proposed policy would actually prove a fiscal disincentive to firms interested in locating in Richmond.

The political barriers are even thornier than the financial barriers. National "business climate" attitudes toward pay equity are most unfavorable. The Reagan Administration has publicly

denounced the concept on the grounds that even in the public sector it might lead to a government program to set the wages for the nation's workers, posing an "unprecedented intrusion into our private affairs."

In reality, the financial barriers to extending pay equity policy through the Affirmative Action Plan to businesses financially connected to the city are small. As of year-end 1984, only ten local employers received local public assistance in the form of grants or industrial revenue bonds. The number of establishments financially connected to the city through other channels are not large. Cost-benefit analysis of a pay equity policy is rendered irrelevant in the face of larger political considerations.

Studies indicate that for private sector companies, factors such as appropriate infrastructure, inexpensive land, and the skills of the local labor force far outweigh financial incentives offered by a local government (Harrison and Kantor, 1978; Schmenner, 1981). Compared to the cost of building a plant and starting production, the savings on interest in the use of industrial revenue bonds, or taxes, through tax abatements are of minor importance. However, not all of the financial outcomes of the proposed pay equity policy are barriers to its feasibility. Financial impacts could include the cost of litigation, back pay, and studies that employers would avoid if pay equity were instituted from the beginning. However, the campaign to end pay discrimination is always controversial, and the struggle at Richmond's City Hall may well be aggravated by the city's lack of adequate financial resources.

The California Chamber of Commerce has come out strongly against a state bill (AB 129) that proposes to make pay equity policy apply to firms in California that receive public assistance. They argue that any public policy that sets standards of pay scales hinders the free movement and use of capital and, by eliminating the effects of the marketplace, creates inefficiencies. Their stated disputes with extending comparable worth into the private sector include the following issues:

1. How dependable is the methodology used in determining discrimination and correcting inequalities?
2. What would be the total cost to California employers?
3. How would such a system work?
4. How would existing wage scales be affected?
5. How would collective bargaining systems be affected?
6. What would be the impact on seniority and merit systems?

7. Would "overpaid" jobs have their rates reduced? (It is illegal to reduce some workers' pay as a result of comparable worth action. This question has already been answered.)
8. How would the "business climate" be affected?

Before any locality acts on its own to mandate pay equity for private employers, convincing replies will have to be found for many of these questions. Few city councils are likely to stand up to the barrage of business opposition that would accompany efforts to legislate pay equity into the private sector. However, continued action in a number of states and by Congress is likely to increase acceptance of pay equity by the public in upcoming years.

Summary and Recommendations

The City of Richmond may soon find itself in the position of many cities across the country. Depending upon the outcome of collective bargaining on the issue, the City may soon correct inequitable wage patterns at City Hall. The Human Relations director will then start working with private companies financially linked to the City to redress their inequities in compensation based on gender discrimination. This move will be welcomed by some, rejected by others. Larger mandates for comparable worth in Richmond's private sector would create both positive and negative implications for the City's economic development.

On the positive side, a public wage scale which incorporates pay equity standards would set a market rate example for employers. Not only could this protect the private sector from strikes and litigation, but it could have important implications for the quality of life for significant numbers of individuals and families. A significant increase in local disposable income could increase savings and consumption, stimulating local investment, service, and retail establishments, and boosting the local tax base. Furthermore, in the long run, the advantages to the City could include lower expenditures on services assisting the poor.

On the negative side, the comparable worth issue is as yet too new and controversial for a local government to take a leading role in its promotion. The State of California is only now beginning to examine the social and economic implications of such a policy. In a city as badly in need of jobs as Richmond, a pay equity policy could boomerang and hinder efforts to develop economic activity. Strong resistance from the private sector, as articulated by President Reagan and the California Chamber of Commerce newsletter *Alert*, could hinder Richmond's efforts to forge a public/private partnership to encourage economic development.

Based on an evaluation of the positive and negative impacts of a public policy addressing pay equity in the private sector in Richmond, we propose the following recommendations for action:

1. The City of Richmond should respond to the findings of substantial pay discrimination in female-dominated job classifications at City Hall by changing the pay scale to compensate jobs on a more equal basis. The Union and the City could work together to establish a new wage scale. Since it is illegal to lower the salaries of those working in overvalued jobs, bargaining could establish a unique combination of wage increase rates to create a fair pay scale within an agreed-upon length of time.
2. The City of Richmond should then embark upon a course of action to incorporate the new pay equity standards into the Affirmative Action Plan. This could be carried out through a "Comparable Worth Technical Assistance Program," created with the aid of the local employment and training agency, the Private Industry Council.
3. A new position could be created in the Private Industry Council to work with the Director of Human Affairs in administering the mandates of the Affirmative Action Plan. This person would work with private employers and unions in conducting and implementing pay equity adjustments.
4. This position could be funded by local labor organizations, the Chamber of Commerce, the Private Industry Council, cities throughout Contra Costa County who would like to extend the benefits of the program to their local employers, and by the County Economic Development Corporation. In addition, fees could be charged to employers from other parts of the Bay Area who wish to take advantage of the program.
5. The City should make available its job evaluation methodology and wage scales to private employers. This document could serve as the guide in helping other employers to achieve a non-discriminatory wage scale. Each employer could then work out its own unique solution to pay equity, with assistance from the specialist in Richmond's Department of Human Relations.
6. The City of Richmond could apply to national foundations or to the California Commission on the Rights of Women for funds to publish and distribute information on job evaluation methodology, implementation of pay equity adjustments, and benefits of timely incorporation of equitable pay standards for the private sector.

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7. The City of Richmond could advertise its support of pay equity and its Comparable Worth Technical Assistance Program as a feature of its overall economic development strategy. This could be featured as a unique "Public/Private/People Partnership" which brings the city, business, and labor together for their own protection and mutual benefit. Such a partnership could be the centerpiece of an economic development strategy featuring the importance of good industrial relations to businesses and workers in Richmond.

NOTES

- 1 *I.V.I. v. Westinghouse (1982) and Taylor v. Charles Brothers Co. (1981).*
- 2 This case was pressed by female prison employees who received substantially less pay than their male counterparts for substantially similar job responsibilities and tasks.
- 3 Under the impact presumption, the employer's perpetration of a discriminatory market system is sufficient grounds for liability.
- 4 The figures used are from the Census Bureau's 1970 and 1980 Census of the Population.

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