

## **Chapter 1**

### **Equity of Power**

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The achievement of equity is perhaps the most fundamental of the goals of the trade union movement.

The union movement's concept of equity does not, of course, confine itself to concern about the position of women; it goes to equity between the power of employers and workers, and to equity between workers with significant market power and those with little or none.

These issues are central to a consideration of equal employment opportunity for women.

Women are likely to be in a weaker labour market position, with less bargaining power than male workers, primarily because they are concentrated in labour intensive service industries and predominate in part-time and/or casual jobs.

Unless this fundamental question of power is addressed, we are wasting our time talking about family friendly policies, glass ceilings, male workplace culture and all the rest of it, important as these are.

In the current environment, there is real reason to believe that women are going backwards, in spite of growing community awareness of the need for measures to assist women in overcoming discrimination and in combining paid work with family responsibilities.

### **The Workplace Relations Act and Flexibility**

With a rather cruel irony, a number of legislative changes with significant potential to disadvantage women have been justified as means by which greater flexibility for women can be achieved.

Individual contracts or AWAs, for example, have been promoted with the claim that they would allow women to negotiate arrangements in relation to working times and other matters which would suit their needs and those of their families.

In the same way, the deletion from awards of provisions setting minimum hours for part-timers, and providing protection for full-time employment opportunities, were sold to the Australian Democrats, amongst others, as a victory over male-dominated unions trying to keep women out of their industries.

The reality for most working women is quite different from this fantasy picture. In general, women in the finance, hospitality, retail or clerical industries work when their employers require them to work. It is the employer complaints about flexibility which were heard by the Government when designing the legislation; employers who resent award requirements for set hours of work and penalty rates attached to some hours of work arrangements.

Of course it is true that many women value flexible arrangements which allow them to better manage work and family responsibilities, particularly involving the care of children.

However, giving employers an even greater ability to determine when and how employees will work, makes life harder, not easier, for workers.

As Sara Charlesworth concluded, in her 1996 report for the Human Rights and Equal Opportunity Commission on enterprise bargaining and flexible hours, "These changes have been overwhelmingly employer-driven, particularly in relation to the removal of restrictions on part-time and casual work and an increased span of hours and days". The report found that these changes could lead to increases in working hours without increased pay, or to flexibility involving sporadic hours of work, less consistent income or a decline in earnings, increased work intensity and an inability to balance work and family.

The debate about part-time work is a good example to demonstrate the difference between employer and employee driven flexibility.

Although many women wish to work part-time, and can afford to do so, it needs to be remembered that certainty and predictability are critical for workers trying to juggle work and family.

Employee driven flexibility means being able to take time off when unexpected family needs arise, choosing to work at home or to nominate working hours which fit in with child care availability, for example.

Employer driven flexibility means hours of work can be set and changed, with no concern about the needs of employees.

Predictability of hours of work is crucial, particularly where the care of young children is involved. Child-care centres do not operate flexibly; generally parents are required to pay for care not used, and it is not always possible to arrange extra care to meet additional hours of work. Use of centre-based child-care is simply incompatible with frequently changing hours of work.

A survey of child care centres conducted earlier this year found that many parents were switching from quality, regulated child care to unregistered, unqualified home based care, while others were giving up work so that they could look after their children at home. In other cases, parents had reduced their working hours in order to cut back on child-care.

While the survey found that the cause of this trend was the increased cost of child care resulting from cuts in Federal Government subsidies to centres, I wonder whether greater employer insistence on flexible (meaning changeable) working hours could be a factor in the move from centre-based care. If this is the case, it is a clear indication of the potential harm to children caused by the growing requirement that workers subordinate their need for stable working arrangements to the short-term business needs of the employer.

It is one thing for women in professional or executive positions to negotiate a four-day week, for example, or for additional leave in school holidays. It is quite another for women on low wages (a retail worker's award wage, for instance, is around \$435 per week before tax) to have their hours of work reduced or increased with the highs and lows of the employer's business.

Industries like finance, hospitality and retail already employ a large proportion of women. It is women who will find that losing their guarantee of minimum hours (awards usually provided for somewhere between 10 and 20 per week) will be reduced to as little as three or four per week. It is women working full-time in the finance industry or the clothing industry, for example, who will find that only part-time work is available to them.

This kind of move towards part-time work has nothing to do with the needs of women. While part-time work does suit some women, for a woman earning little more than \$400 per week, a cut in her working hours will greatly affect her standard of living and that of her family. Yet, in many cases, part-time work is all that is available. In a study of women retrenched from the clothing industry, Sally Weller, from the University of Melbourne, found that those who were able to find employment generally did so only on a part-time basis in the service sector.

With the ending of the transitional period for awards under the *Workplace Relations Act* on 30 June this year, almost exactly a month ago, some protections for part-time workers have ceased to be of any legal effect.

It is, of course, possible for more protection for part-time workers to be included in enterprise agreements, but women are heavily represented amongst those least likely to have the bargaining power to do so, although there are good examples of agreements with conditions such as paid maternity leave, and part-time work provisions activated at the initiative of the employee.

### **Union Achievements for Women**

In spite of the legislative restrictions, the union movement has succeeded in warding off some of the employer and Government attacks on the living standards of low-paid workers.

In the hospitality industry award simplification case, the Commission rejected an application by employers, supported by the Commonwealth, to drastically reduce penalty rates in an industry where a full-time wage is around \$420 per week and most workers are part-time or casual. Please note that this is before tax and that over-award payments are practically non-existent in this industry.

Further, in the recent living wage case, the union movement was able to secure increases between \$10 and \$14 for workers who are dependent on award rates of pay. This group contains a significant proportion of women, who would have been more likely than men to receive the full \$14, payable to workers whose full-time ordinary rate of pay was no more than \$550 per week.

Additional challenges lie in the current application to convert awards covering nurses and public servants from paid rates to minimum rates, which would have the effect of lowering the benchmark for the "no disadvantage" test for agreements and deny workers unable to bargain the benefits of safety net increases.

There is real evidence to show that the best protection for workers, especially female workers, is union membership. You might be thinking "She would say that, wouldn't she", but just look at the figures. Unpublished data from the Australian Bureau of Statistics, released in March this year by the ACTU, showed that, on average, female union members earn \$95.10, or 22.4 per cent, more than their non-union counterparts. Unionised part-timers earn \$65.10, or 26.3 per cent, more than non-unionists, and casual members \$48.30, or 14.9 per cent, more than non-unionised casual employees.

The data also showed that union members were far more likely to receive standard employment benefits such as superannuation, sick leave, annual leave and long service leave, particularly for part-time and casual employees.

## **Pay Equity**

The history of women's struggle for equal pay for work of equal value highlights the barriers put in the way of equity, not only in the past, but today.

Following the 1969 decision granting equal pay for equal work, employers tried to argue that female cooks were worth less than male cooks because they did not do the heavy lifting, or that process work in the metal industry was a predominantly female occupation, with no male comparison, even though 30 per cent of process workers were male.

Similarly, following the 1972 decision for equal pay for work of equal value, there were many attempts to reclassify and restructure female work to avoid the effect of the decision.

With female award earnings now over 90 per cent of men's, the focus for equal pay activists has shifted to the over-award area, where women earn less than half the over-awards paid to men, a gap which is increasing.

The insertion of special provisions for equal remuneration for work of equal value into the *Industrial Relations Act* in 1994 gave the Commission clear jurisdiction in the over-award area for the first time. Although the current Government proposed to remove the provisions in 1995, this was abandoned following an outraged campaign by unions and women's groups, and the refusal of the Democrats to agree in the Senate.

Since that time, the ACTU has made strenuous efforts to make use of the provisions, focussing on the manufacturing sector, where over-awards are common, unlike in most female-dominated industries.

In looking for workplaces where women were doing work of equal value to men but receiving lower wages the ACTU found most employers acted immediately to rectify the discrimination by increasing the women's pay.

Eventually, we found our first test case - HPM Industries in Sydney. Prior to a recent well-publicised round of dismissals, the company employed 300 female process workers, all on \$413.90 per week, and seven male general hands earning from \$13-\$30 more than the women. The company also employs 27 female packers, all earning \$440.50 and 22 male storepersons, on seven different rates of pay, the highest of which is \$77 more than the women.

The original application was made in December 1995, with employers using every tactic available to delay implementation of equal remuneration. The evidence before the Commission, showed that when the competency standards are applied (this is a skill evaluation process contained in the Metal Industry Award) the women's jobs required at least the same, and in most cases higher skills than the men. In spite of this, the Commission dismissed the claim, saying that application of the competency standards was not sufficient to show work of equal value, and that a traditional work value inquiry was required. The union, with the ACTU's assistance, has embarked on a full work value inquiry which will undoubtedly come up with the same sort of results.

The situation has been complicated, however, by the company's decision to dismiss some workers, mostly men but also some women, whose work was being used to show the existence of discrimination. Some of them will be offered new jobs under a re-classification system designed to avoid giving equal pay to the majority of the women. While the case continues, this action, together with all the delaying tactics and taking of technical points before the Commission, shows the lengths employers will go to avoid implementing a principle which we sometimes think is generally taken for granted.

This case shows the reality of discrimination in this country. These women have been forced to wait three years, while still being denied justice. They have been brave and they have been patient. These women come from many different countries, including the Philippines, Indonesia, China and Portugal; they need their jobs to support their families.

They are prepared to stand up for a principle, and 13 women have made witness statements in support of the case. At the same time, they don't want to see their male workmates disadvantaged. They believed the union when it told them that this could not happen under the Act and that the Commission wouldn't let it happen.

Whatever happens with the case before the Commission, where the union will pursue its claim either against revised comparators or for retrospective application of equal pay, the fight will continue.

### **Conclusion**

If we are to continue effectively to work for real equity in the workplace we cannot divorce so-called women's issues from our industrial relations framework.

This is not to say that there is not an important role for a range of bodies working for EEO. In this context, the ACTU welcomes the government decision to appoint Susan Halliday as the Sex Discrimination Commissioner, after initially determining to abolish the position altogether.

Together with the Affirmative Action Agency, the Sex Discrimination Commissioner can make a major contribution towards the elimination of discrimination. In the ACTU's view, it is critical that the Affirmative Action Act retains the obligations it imposes on employers together with sanctions for non-compliance, although this is not to say that the structure and operation of the Agency should be written in stone and unchangeable.

Women have made some strides towards equality; it will be up to all of us to ensure that we continue in a forward direction.