

AN ARTICLE ON "COMPARABLE WORTH"
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Emerging as one of the most controversial labor issues of the 1980s is comparable worth, or equal pay for different work. On January 3, legislation that would authorize a study of allegedly discriminatory pay differentials between jobs mainly held by men and those primarily performed by women was introduced in the new Congress. This bill, similar to one passed by the House of Representatives last year, would cover jobs within the federal civil service. Advocates of comparable worth, however, are also pushing their cause in the states, among other public employees. And there is no question that their ultimate goal is to change pay practices in the private sector.

Legislatures in several states including Minnesota and Iowa have recently passed measures seeking the adoption of comparable worth in state pay practices. Legislatures in a number of other states including Nevada, Rhode Island, and Virginia have either authorized or passed resolutions calling for comparable worth studies of state employment. In California, Connecticut, Hawaii, and Illinois, among other states, public employees are in federal court, charging their employers (in most cases, the states) with violations of federal law that they believe already requires comparable worth.

Meanwhile, in New Haven, Conn., the comparable worth movement is making its most publicized stand in the private sector. Seeking more pay in contract negotiations with Yale University, the school's clerical and technical workers, who are predominantly female, are publicly couching their demands in comparable worth terms. For example, it is said that Yale's administrative assistants, who are mostly female and make on average \$13,424, do work at least as valuable to the university as its truck drivers, who are mostly men and make on average \$18,470.

It is fair to say that comparable worth has gained a degree of popularity in some circles. But that does not make this unsupportable idea any more tenable. As I will argue, comparable worth cannot be justified on any ground -- whether of law, economics, or policy. It does not merit adoption in the public sector, and one can

be sure of this: it would enter the private sector only by government mandate.

What exactly is comparable worth, and why is it said we need it? Contrary to what its advocates say, comparable worth is not the same as equal pay for equal work.

Equal pay for equal work means, for example, that two printers, one male and one female, who do the same work for the same employer should be paid the same. The Equal Pay Act of 1963 affirms this principle of basic fairness. No one questions its validity, no one should, and this administration wholeheartedly supports it.

Comparable worth incarnates a far different principle -- that two jobs, one performed mostly by women, the other mostly by men, which are not identical but are alleged to be "comparable" in value to employers or society, should pay the same wage. In a case pending in a federal district court in Michigan, for example, secretaries, almost all of whom are female and are paid \$12,882 to \$16,432 annually, are said to perform jobs of as much worth as those held by maintenance mechanics, who are all male and earn from \$15,868 to \$19,961 a year. Not equal pay for equal work but equal pay for work of allegedly comparable worth -- indeed, different work -- is the idea involved.

Comparable worth proponents point to the fact that jobs traditionally held by females -- nursing, secretarial, and other office jobs, for example -- have paid less than those traditionally performed by men, such as plumbing, engineering, and maintenance. They argue that the "female" jobs are worth at least as much to employers or society as the "male" ones. The explanation for the difference in pay, they assert, must be sex-based discrimination. Ratcheting salary schedules upwards so that the female jobs are paid as much as the male ones is the comparable worth remedy.

Thus, in a case pending in the United States District Court for the District of Oregon, it has been alleged that university teachers in the "female" fields of nursing, dental hygiene, secretarial science, business education, and teacher education should be paid as well as those in the "male" fields of medicine, dentistry, business administration and education administration.

Congress has never passed a law mandating comparable worth in any form or fashion, yet the federal

judiciary, as in the Michigan and Oregon examples, is being invited to read comparable worth into Title VII of the Civil Rights Act of 1964, which states that it is unlawful for an employer "to discriminate against any individual with respect to his compensation . . . because of such individual's sex." A comparable worth interpretation of Title VII, however, does not square with the intent behind the law.

Title VII can be understood only in light of the Equal Pay Act of 1963. In passing the latter, Congress thoroughly considered and specifically rejected proposals covering jobs of a "comparable" character. Instead, Congress drew a circle around the one area where discriminatory treatment could reasonably be presumed -- men and women doing the same work but receiving unequal pay -- and outlawed such differentials.

The Equal Pay Act was just that -- a guarantee that equal work would be equally compensated. There is nothing in the record to suggest that this sense of Congress changed during the subsequent months as it debated and passed into law Title VII.

So far, only one federal court, that of the Western District of the State of Washington, has gone beyond the intent of Title VII by adopting a comparable worth interpretation. Last year, in a much-discussed case brought by the American Federation of State, County and Municipal Employees against the State of Washington, that court found the state liable for sex-based pay discrimination against women under Title VII. The court ordered the state to increase the salaries of all employees, male and female, in jobs held mostly by women, to levels commensurate with their rating in a state-sponsored comparable worth study conducted in 1973.

The AFSCME case is now pending before the U.S. Court of Appeals for the Ninth Circuit, which in 1984 rejected a comparable worth claim by the predominantly female nursing faculty of the University of Washington. The Supreme Court decided not to review this decision, thus leaving interpretation of the law, for the moment, in the hands of the circuit courts of appeals. To date, the six courts of appeals to rule on comparable worth claims have unanimously rejected them.

Not only is comparable worth not the law, it plainly shouldn't be. Comparable worth would reverse the long overdue trends favoring more cost-efficient government and freer markets. In the public sector,

comparable worth would only further reduce, if not eliminate altogether, the influence of the marketplace upon determinations of civil service pay. Applied to the private sector, comparable worth would dramatically increase government influence upon the workings of the marketplace by disrupting the current mixed system of supply-and-demand (including the effects of competition from abroad), collective bargaining contracts, and state and federal rules (such as the minimum-wage law) that determines private sector pay.

Comparable worth is plainly a very bureaucratic and most expensive proposition. At the federal level, no existing bureaucracy has the time or manpower even to attempt an implementation of comparable worth. A new agency would have to be created, and it would dictate "comparability" standards, order subsequent adjustments, and oversee the implementation of every jot and tittle of its various commands. The regulation comparable worth implies for the private sector would exceed the scope and influence of any it currently experiences.

In the public sector, comparable worth costs would be passed on to (who else?) the already overburdened taxpayers; if the decision in the AFSCME case is not reversed, the cost to the state of Washington (read: Washington taxpayers) is reliably estimated to be \$400 million in the first year of implementation and \$60 million every year thereafter. In the private sector, comparable worth costs would also be passed on to taxpayers, in the form of higher consumer prices.

This might not be the only cost. With the price of certain types of labor raised by government fiat, employers might well decide to buy less of it. Employment in those areas would then decline, as would total output. That darkness one sees at the end of the comparable worth tunnel is economic decline.

No one can seriously consider comparable worth without reflecting on the practical problems it would raise. The comparable worth bureaucracy -- made up of government officials, lawyers, and judges -- would determine which jobs are, in effect, "male" and which "female." But is a "male" or "female" job one in which 70 percent of those performing the job are men or women, as one comparable worth proponent has said? Why not 80 percent, as another comparable worth study concludes? For that matter, why not 90? Why not 60? Or 69, or 71? And what happens when, whatever percentage is chosen, it

begins to slip? Is the job in question still a "male" or "female" job?

Further, there is the problem of figuring out the "worth" of each job. How does one say which job is worth more or less than another one? Obviously, one person's criteria for job "worthiness" may not be another's. And it is hardly clear how the criteria of any person who has this task of determining the value of jobs should be evaluated. Not only the criteria, but also the weight assigned to each criterion, are subjective matters.

Most fundamentally, there is the question of who is to make all of these determinations. Who is to say which jobs are "male" or "female," which jobs are "worth" more than others, how many points to assign to this job as opposed to that one, and how then to evaluate the points assigned? And why should anyone want to give these arbitrary tasks to government bureaucracies? Who is government to say that administrative assistants and truckdrivers, or nurses and mechanics, should be paid the same? It is hardly obvious that government would determine pay scales in a more competent manner than now exists. Moreover, only the naive could suppose that comparable worth bureaucracies would be unaffected by political considerations as they assign points and evaluate jobs.

Comparable worth is an idea rich in irony. Advanced in the name of women's equality, it would require government's labeling some jobs as "male" and others as "female." Furthermore, those who would benefit from comparable worth would be, as the Washington case illustrates, not only the females who fill "female" jobs, but also the males in those jobs. Comparable worth, whatever else may be said against it, is overinclusive in terms of those who would benefit from it.

There is also the irony that comparable worth, if implemented, would reduce the incentives for women to move out of jobs traditionally held by their sex into those long held by men. The increased pay in traditionally female jobs would encourage women to stay in those jobs and could lead to an oversupply of workers for certain occupations.

A case pending in federal district court in Illinois demonstrates the far from unreasonable fear of some women that comparable worth could even reduce the salaries paid to women who have moved into "male"

occupations. In a complaint brought by the American Nurses Association and others against the State of Illinois, it is alleged that the state uses "a sex-biased system of pay and classification which results in and perpetuates discrimination in compensation" against those employed in occupations historically held mostly by women, such as nursing, health technician, switchboard operator, and clerk typist. The complaint cites an official study commissioned by the state concluding that "female" jobs possess greater value than certain "male" jobs and are paid less. For example, the study rated Nurse IV above Electrician, but the nursing job pays an average monthly salary of \$2,104, and the electrician job paid \$2,826.

It is obvious, however, that women in Illinois disagree with this study and indeed with the whole idea of comparable worth. Fifteen women, all of whom hold jobs traditionally performed by men, have recently asked the court for permission to join the state as defendants. According to the state's comparable worth study, the jobs these women hold -- as correctional officers, a security officer, an accountant, and an office manager -- should be, in effect, devalued. These women believe that if the decision in this case requires the implementation of the comparable worth study, their paychecks will be smaller.

In their filing with the court these 15 women deny "that they are beneficiaries of sex discrimination, or are overpaid On the contrary, any favorable salary positions they enjoy relative to [the plaintiffs] are the result of special skill, hard work, and the nondiscriminatory forces of supply and demand." The group of women also states "a direct interest" in preserving the present system of compensation, which "rewards them for their special skills; their performance of particularly difficult, dangerous, or unpleasant work; and their willingness to challenge stereotypes and perform jobs traditionally occupied by males."

These Illinois women represent the healthy trend of the past two decades, during which the workforce has become more and more integrated, with women making dramatic inroads into jobs traditionally held by men. One reason for this trend, no doubt, is the very willingness of many women to "challenge stereotypes and perform jobs traditionally occupied by males." Surely there is no reason to change this trend by jettisoning current public policy in favor of comparable worth. Aggressive enforcement of Title VII to ensure women equal employment opportunities, combined with vigorous enforcement of the

Equal Pay Act, remains the best means of securing the great goal of equal employment opportunity and equitable employer treatment for all Americans, regardless of sex.