

The Struggle for Equal Pay for Work of Equal Value: A Case Study

Stella Lord

Introduction

The concept of equal pay for women has not been tied to the concept of 'value' in most provincial equal pay legislation in Canada. The pay of men in similar jobs in the same establishment has, in most cases, been the criterion for equal pay legislation.¹ Consequently, if women work in sex segregated jobs, or job 'ghettos', they remain outside the present legislation in most Canadian provinces.

Possibly as a natural effect of the women's liberation movement on the one hand and frustration with the slow progress towards effective equal pay legislation on the other, women are now tending to turn to unionization and union militancy to achieve higher rates of pay.² Except in one or two isolated instances, however, there have been few explicit demands based on the concept of equal pay for work of equal value.

Moreover, there is little uniformity in the extent to which the

process of unionization itself is successful, or the economic benefits to be gained from it are realized. Unionization amongst nurses has been relatively successful on both counts, whereas unionization amongst bank tellers has been slow, spasmodic and localized, and unions have been unable to make real economic gains. The strike of the Communication Workers (Bell Canada) succeeded in making economic gains, whereas workers at Radio Shack, Fleck and Blue Cross in Ontario underwent long strikes merely to gain union recognition and the right to bargain. Even where women are unionized, therefore, higher rates of pay (to say nothing of general overall parity with male workers) are not achieved without a struggle. Unions, even the most militant and well organized, must face not only the economic power of their employers, but an ideologically structured industrial relations system which is also weighted against radical change in bargaining patterns. Union militancy around the issue of higher wages for women is certainly a step in the right direction. But while it provides a vehicle and a tool for the attainment of equal pay, unless demands are tied to the concept of value there are limitations on what it can do for women working in highly sex segregated jobs and for those with little or no collective bargaining strength. Union militancy, therefore, is not a panacea.

If the concept of equal pay for work of equal value were to become an accepted criterion on which pay rates were to be negotiated, however, it could have wide ranging effects on the status of women in our society, both inside and outside the labour movement. There is also the possibility that it could raise broader, more fundamental, questions about the 'value' of labour. For the concept of 'value' as a measurement for wage rates introduces a criterion which raises a number of questions about the labour market, the collective bargaining system and the

structure of wage rates. More importantly, for women in sex segregated work, it raises the question: what is the nature and function of the work that women have traditionally performed in our society? What is the 'real value' of women's work?

In early October, 1977, Local 31 of the Steel Plate Examiners at the British American Bank Note Company in Ottawa went on strike for equal pay. Their demand was for equal pay with some of the men in their plant whom they contended were doing jobs of considerably less skill and responsibility than their own. There was more than one dollar difference between the full hourly rate of pay of the lowest paid men in the plant and the women. In addition, the male 'floor boys' started at a higher rate of pay and achieved the maximum rate after one year; the women did not achieve their full rate until they had been with the company for two years.* The Steel Plate Examiners Local was, therefore, demanding a 29.2% increase which would have given them parity with the lowest paid male workers in the plant. During negotiations and until the local went on strike in October, they had only received an offer of 12.8% by the company.³

But the strike was more than a strike about a specific wage increase. It was a strike about equal pay and as a result it became (somewhat after the fact) a 'cause celebre' for women's groups inside and outside the labour movement in Ontario. But this was the first strike in which the Steel Plate Examiners local had ever been involved in their thirty year history at the plant.⁴ The women, therefore, were fairly inexperienced in organizing for a strike. More importantly, however, because the political significance of their demands were not immediately apparent to them, they did not exploit to their advantage the broader political support of women which might otherwise have been available

*Steel Plate Examiners started at \$3.75/hr., reaching a maximum of \$5.00/hr. after two years.

to them. For this, and several other reasons which will be discussed later, the strike was not very successful in meeting their immediate demands. In particular, it did not succeed in changing the company's opposition to recognizing the local's claim to parity with the male workers.

The women went back to work after nine weeks, having only obtained the agreement of the company to submit the dispute to arbitration. On April 13, 1978, Owen Shime, the Arbitrator in the case, made his decision in favour of the company's original offer of 12.8% retroactive to May 1977.⁵ In view of the terms of reference of the case, the reasoning behind Shime's decision seemed dubious to the Counsel for the union and it was decided to submit the decision to judicial review. But the Counsel later advised against this because it was felt that the chances of a reversal of the decision would be limited. Instead, it was decided to put the case before the Canadian Human Rights Commission, which had come into being in January 1979 to act as a tribunal court on alleged contraventions of the Canadian Bill of Rights. The decision to go this route was made because it could be argued that the Company was contravening Clause 11 of the Federal Bill of Rights which provides for non-discrimination in pay on the basis of equal pay for work of equal value.⁶

Although the company's main customer is the Bank of Canada, it was not at all clear whether the labour relations of this company would be held to fall within federal or provincial jurisdiction. Nor was it clear whether the Canadian Bill of Rights would take precedence over provincial legislation in labour relations. On February 26, 1980, the Human Rights Tribunal decided 'with regret' that because the labour relations of the company did not fall under federal jurisdiction, the

equal pay clause in the Canadian Bill of Rights could not apply.⁷ Since the Minister of Labour for the province of Ontario had already ruled before the strike commenced that the women were "not performing substantially similar work" to the men in the plant, the matter had not been put to the Ontario Human Rights Commission.

For the future, therefore, the Steel Plate Examiners have only two avenues open to them to improve their present position to rely on their own bargaining strength with the company or, together with the opposition parties and labour and women's pressure groups in the province, to put pressure on the government to change the legislation.

In terms of the women themselves and the sustained effort which was demanded of them over the period of 2½ years the outcome was more than just an economic setback, it was a defeat which struck at their own self respect as working women. As a result, the impetus for future struggle around the issue in their local was seriously stunted.⁸ In terms of the industrial relations and legal systems within which these women were involved for that 2½ years, there exist serious barriers to the attainment of equal pay which appear to be insuperable. These barriers exist for any group of women working in job 'ghettos', who seek to obtain equal pay for work of equal value through the collective bargaining process.

An understanding of the structural barriers within the collective bargaining route to the attainment of equal pay for work of equal value is essential if these are to be overcome for that goal to be reached. It is proposed in this paper, therefore, to examine in greater detail the collective bargaining/industrial relations process and the political appeal process as these affected the outcome of this specific case. While it will be difficult to generalize beyond this particular case

to any other case as to the final outcome, many of the same structural barriers and sets of assumptions that lie behind these processes will exist in most collective bargaining situations.

The Case Study

1. Collective Bargaining

(a) The workplace, the company and its employees

The British American Bank Note Company is engaged in the business of engraving and printing of high security material such as bank notes, postage stamps, lottery tickets, share certificates and travellers cheques. The Ottawa plant prints mainly bank notes and postage stamps and it is the only one of its four subsidiaries which operates the steel plate presses.⁹

The company has been in operation since 1866 and was incorporated in 1909. It was in the control of the estate of the founder until 1929 when these holdings were bought out privately. Shares were not offered on the stock exchange until 1945. Since 1967 the Company has been involved in a number of acquisitions and takeovers and has recently experienced expansion in sales and profits. In 1978 the company's net income increased by 45%. In the same year, sales were up by 23%. Similarly, for the first 6 months of 1979, profits rose by 42% and sales by 21%. In constant dollars, the company's earnings per share rose from \$1.68 in 1974 to \$5.62 in 1978 while in the same period profits rose from \$754,000 to \$2,528,000. The company is, therefore, a growing concern and it attributes this growth to "an expansion of the company's product base plus increased productive efficiency".¹⁰ The company has only one other major competitor, the Canadian Bank Note Company, also based in Ottawa.

Local 31 of the Steel Plate Examiners is made up of 24 women whose average seniority at the company was 17 years at the time of the strike.¹¹ The turnover of workers, therefore, is low and this is an acknowledged asset to the company.¹² The local is part of the International Plate Printers, Die Strippers and Engravers Union whose head office is in the U.S. The union has no full time personnel in Ottawa and the locals have traditionally maintained a great deal of autonomy from the International and its other locals in bargaining.¹³ The Steel Plate Examiners have also historically negotiated separately from the Printers Local and the five other unions in the plant. They have, however, negotiated jointly with the Steel Plate Examiners at the Canadian Bank Note Company. These women are also members of Local 31.¹⁴

Working in pairs or threes, the Examiner's job consists of examining and stacking the printed material as it comes off the presses. The Examiner removes defective work and at the same time, from about six possible problem areas connected with the specialized process, attempts to diagnose what might be causing the defect. If it is considered serious enough, the Examiner is responsible for signalling problems to the printer or for stopping the press in order to rectify the problem. The Steel Plate Examiners have first responsibility for determining whether the product is acceptable. Failure to correct an error may result in excessive spoilage or damage to the machine. Another group of workers, the Graphic Artists, carry out a later, more detailed examination of the printed material but they have nothing to do with the printing process itself. This group of workers is also made up of women and their rate of pay was the same as that of the Examiners. These workers are members of the Graphic Artists International, Local 588.

Besides checking the printed material, the Examiner is sometimes called upon to place tissue sheets between printed sheets. The presses deliver between 25 and 60 sheets per minute depending on the type of material printed and the press which is in use. The work was described by the Arbitrator as "of a fatiguing nature". The basic training for the Examiner is on the job training working with an experienced Examiner. After three months the employee may work alone on the simpler processes or on a less demanding job and will then be moved gradually to more difficult work. An Examiner is expected to be proficient after one year although the full rate of pay is not reached until after two years on the job.

The company employs about 250 hourly paid workers at its Ottawa plant and with the exception of one unrepresented group they are represented by 6 unions and covered by 11 separate collective agreements.¹⁵ The unions and the company, therefore, are engaged in a multiple collective bargaining situation with both skilled and unskilled workers. Although this kind of craft bargaining situation can result in fairly established relationships between the rates of pay of the crafts, their helpers, apprentices and journeymen, pay differentials between the Steel Plate Examiners and other semi-skilled and unskilled workers in the plant had widened in recent years. Although the arbitration decision placed the main portion of the blame for this with the Examiner's union and their ineffectiveness in bargaining, the women themselves argued that the differentials were the result of discriminatory hiring and training practices of the company. The company, they argued, hired women only for training into the position of Steel Plate Examiner. In addition, until the post arbitration period, women had not been given the opportunity to apply for positions in the plant then held by men, such as printer's helper or porter.

There also seems to have been an attempt on the part of the company to control the labour market in the area. The job is fairly specialized and few similar jobs exist in the Ottawa area but the women alleged that there was an unofficial agreement with The Canadian Bank Note Company not to hire each other's employees.¹⁶ Because of the lack of mobility both inside and outside the firm, one possible explanation for the maintenance of wage discrimination inside the company was that it was able to take advantage of this situation to impose starting wages and wage settlements below those obtained in dollar terms by male workers.¹⁷

b) Collective bargaining

The one year collective agreement between the company and the union was due to expire in April 1977. In February 1977, under the terms of the agreement, the local notified the company of its intention to negotiate a new collective agreement in which "equal wages with the men on the floor" would be the central issue. At the same time, the local requested that joint negotiations be held with the Canadian Bank Note Company.¹⁸

The male workers with whom the women of Local 31 were comparing themselves in their negotiations belonged to the lowest paid group of the Ottawa Printing Specialties and Paper Products Union. These workers were designated as "Porters, Paper Handlers and Cleaners" by the Company and referred to as "porters" and "floor boys" by the women. The higher categories within this union were classed into three grades designated by the company as Building Maintenance Workers. As of April 1977, the pay range for the lowest classified workers in this union was between \$5.11 and \$6.26 and for the highest it was between \$6.48 and \$6.89.¹⁹

A second group of male workers with whom the women subsequently compared themselves during the arbitration process were the Printer's

workers, also members of the Printers International Union. These workers received two years on the job training and the rate of pay ranged from \$6.17 to \$9.59 an hour after two years.²⁰

The collective agreements of the other bargaining groups in the company were also due to expire at the beginning of May. The company agreed to commence bargaining with Local 31 as all the other negotiations would hang on the outcome. The company's initial offer to all bargaining units was 8%. Local 31 rejected this. By the middle of May negotiations seemed to be going nowhere and the President of Local 31, Shirley Cooligan, wrote to the Employment Standards Branch of the Ontario Ministry of Labour asking them to investigate the matter as a case of wage discrimination on the basis of sex. The reply from the Ministry indicated that because the women were not doing substantially similar work as the men, the matter did not fall under the Ontario Labour Standards Act. The Ministry advised the local to pursue their goals through collective bargaining.²¹

A conciliator was called in during the summer but neither the company nor the union was willing to move from their positions. As the possibility of a strike seemed to be no longer just a threat, in September the company increased its offer to 10% to all bargaining units, with an additional 2.8% to the Examiners and the Graphic Artists from January. The Graphic Artists accepted this two-stage offer and the other all male bargaining units in the plant followed suit. The Examiners at both companies again refused the offer because it did nothing to meet their demands for parity with the lowest paid male workers.

A week before the strike was due to be called in mid-October, the company threatened to withdraw the usual retroactive pay clause if the local went out on strike. When it became obvious that they would

either have to accept the company's latest offer or go out on strike and risk losing their back pay, the Examiners from the Canadian Bank Note Company voted to accept their employer's latest offer which was the same as that of the British American Bank Note Company.

The acceptance of the two-stage pay increase by the Graphic Artists and later by the Examiners from the Canadian Bank Note Company not only isolated the Examiners at the British American Bank Note Company in their strike action and rendered it much less effective than it might otherwise have been, but it also jeopardized their case in the arbitration hearing. The British American Bank Note Company made the case that the Examiners had requested joint bargaining with the Canadian Bank Note Company. Because the workers there had accepted their employer's latest offer, it was questionable, argued the company, whether the higher claims of the British American employees were legitimate. But the fact was that negotiations were never actually carried on jointly. The two companies seem to have made the same offer to both sets of workers and the local, as far as possible until the strike was called, maintained a unified bargaining position.

In early October 1977, the Examiners at the British American Bank Note Company were in a legal position to strike and they voted to do so on October 14, with the explicit demand that this was a strike for equal pay for work of equal value.²²

c) The strike

The strike lasted for nine weeks and the picket line was 'manned' every day and night during that period. The women received only \$25.00 a week in strike pay and this was due to run out after the tenth week. Although the plant was never at any time completely shut down during the strike, production slowed down considerably after a few weeks. This was largely because the Printers refused to cooperate with the

company in putting two men on each press, one of whom, it was intended, should perform the examiner's tasks. Although some picketing was successful in keeping out suppliers and maintenance people, in order not to alienate their fellow workers, Local 31 agreed that other workers in the plant could cross the picket line.

The picket was not successful, however, in its main purpose of blocking the shipping out of material for delivery to the Bank of Canada. Nor was it successful in preventing some material from being sent to the company's plant in Montreal. Nevertheless, because the printers refused to cooperate with the company in working with blackleg labour, production at the Ottawa plant slowed down enough so that by the beginning of December, the printers and several other employees were laid off.²³

The company did not approach the union for further negotiations until the women had been on strike for two weeks, at which time they merely repeated their previous offer.²⁴ The mediator was called in on the fifth week of the strike. At this point the union understood that arbitration was not a possible alternative in this case, even though they believed that the company favoured this solution. The confusion over this was cleared up and the union and the company met with the mediator early in December to discuss the issue. The mediator later met with the union privately and indicated that they would have to spell out the terms of the arbitration very carefully if they wanted to have the case considered on the basis of equal pay. The terms were then the subject of further negotiation with the company over a period of about one week before the strike was finally called off.²⁵

The company had attempted to counteract the effects of the strike in two specific ways. Firstly, there was an attempt to maintain production inside the plant by persuading the printers and the graphic artists

to take on the Examiners' work. When this failed because of the lack of cooperation from the printer's union, the company shipped material to its Montreal plant for processing and checking.²⁶ The company's strategy to obtain cooperation from other workers to help break the strike took the form of persuasion and threat. In the first instance, the company contrived to set those employees still working in the plant against the striking workers. Meetings were called and letters sent to employees who were laid off 'explaining' the situation. Although the all female Graphic Artists' union seems to have been willing to comply with the company's request, the Printers' union refused to cooperate by working two men to a press. It was then suggested by the company to the printers that if the strike was allowed to continue technological changes might have to be introduced, putting some of the printers' jobs in jeopardy.²⁷

What finally persuaded the women to go back to work was their own economic hardship combined with what they knew to be the economic hardship of the other employees from the plant who had been laid off.²⁸ The Printers, for instance, were in a particularly bad situation because not only were they not receiving strike pay, but the UIC had ruled that because they were members of the same International as the striking employees, they were ineligible for UIC payments.²⁹ Christmas was approaching and the strike pay was running out. The Local voted to return to work and on December 15, the union met with the company to discuss submitting the case to arbitration.³⁰

2. Arbitration

Instead of the 29.2% originally demanded during bargaining, the local changed its demand in the arbitration brief to equal pay for work of equal value based on job evaluations drawn up by an expert from CUPE. On this reckoning, the Steel Plate Examiner's job fell between that of

Printer's Helper and the Floor boy/Porter and would need a 77% pay increase to give the women parity.³¹

The terms of reference of the arbitration case agreed between the union and the company, however, were somewhat ambiguous as to the question of equal pay for work of equal value.³² In the written agreement to send the matter to arbitration dated December 17, the dispute was described as one which had "arisen out of a difference of opinion between the parties on the merits of skill and responsibility of a job with the company regardless of sex." Following this preamble, the specific point for arbitration was specified as "The rate of wage to be paid to the Examiners during the term of the contract."³³

The union's brief in the arbitration case used the opening paragraph of the agreement as the definition of what the dispute was about. With the use of evaluations, therefore, the union was able to compare the jobs and the rate of pay for the Examiners with that of other (male) jobs and rates of pay for the men in the plant who were closely connected with the printing process. The company, on the other hand, chose to base its case solely on the question of the rate of pay. In doing so they compared the Examiners to the Graphic Artists who performed an examination function inside the plant and to workers doing similar work outside the company in the federal government or the printing industry.

The arbitrator, Owen Shime, took the middle ground between these two positions. In doing so, he circumvented the issue of equal pay for work of equal value because he addressed the question of sex discrimination separately from that of comparability. This undermined the union's argument that the two were inevitably linked because of the 'job ghetto' situation inside the plant which had been created by the hiring and training practices of the company. Secondly, because Shime argued that

the method of job evaluation had historically not been used in collective bargaining in the printing industry, he ignored the union's calculation of where the examined job stood in relation to others at the plant. Shime dealt with the comparability issue explicitly from the point of view of the traditional collective bargaining practices in the printing industry. Thirdly, Shime argued that the arbitration process was not a 'judgement' but an 'adjudication' based on what existed in similar jobs and situations elsewhere, and/or, if applicable, on a set of historical relationships which have been established over time. Shime, therefore, ruled out the possibility that the arbitration could be a precedent setting case which would in any way alter established practices.³⁴

More specifically, Shime refused to accept the union's case of comparability on the basis of job evaluation for three reasons: 1) the history of bargaining in the printing industry had been 'splintered' and "the relationships among workers were not capable of being analyzed on a purely rational or objective basis." 2) The job evaluations provided by the union had been 'too selective' because they had not included the Graphic Artists at British American who were paid similar wages as the examiners. Because the issue of pay was separated from the issue of discrimination, he did not take up the question of job ghettoization. 3) The job evaluation had not been the result of a consultative process with the company but had been unilaterally formulated by the union.³⁵

While Shime did not argue against the union's case that the company, because of its profitable record, had the ability to pay the wage demanded, he agreed with the Company that its competitive position had to be taken into account and that the settlement of a 77% wage demand could jeopardise this. Although the company did not fall within the terms of reference of the AIB, it also made the case in its brief that because

wage and price controls were in effect in Canada at that time, a wage settlement above the norm set by the Anti-Inflation Board regulations would be inflationary and irresponsible.³⁶

Addressing the question of discrimination, Shime agreed with the Ontario Ministry of Labour that the work was 'not similar' to that of the male workers. He argued in fact that the work of the floor boys was 'dirtier' than that of the Examiners and this could account for the difference in wages. In this context, the usual criteria of skill and responsibility were ignored. In his concluding remarks, Shime argued that while there was inconsistency in the wage rates of the floor boys and the examiners, this was not necessarily evidence of discrimination on the part of the company. Instead, he made two kinds of argument which, while it attributed the difference in pay to the collective bargaining process, also placed the solution in that arena.

Firstly, the work force in the industry is splintered into multiple bargaining units which of itself produces inconsistency in wage bargaining. Since this occurs elsewhere under similar conditions, he argued, inconsistency was not unusual and was not evidence of discrimination. Secondly, the wage rate of the 'floor boys' could be accounted for by more effective collective bargaining on the part of their union. The solution to the widening differentials and the different rates of pay between the two sets of workers, therefore, lay in the collective bargaining process.³⁷ On this question Shime took a similar position to that of the Ontario Ministry of Labour. The onus was quite clearly put upon the Steel Plate Examiners' local and the Printer's union to bargain more effectively on behalf of the women.

Furthermore, Shime accepted the company's argument that in comparison with the Graphic Artists at the company and other examiners at the Bank

of Canada and the federal government, as well as in other printing establishments elsewhere, the wage offered to the Steel Plate Examiners was 'a fair one'. Again the question of job ghettos--whether the examiners at the other plants were also women or predominantly women--was not addressed, nor could it be under the terms of reference which the arbitrator had set for himself.

Shime also accepted the company's argument that because the offer of 12.8% had been accepted by the Steel Plate Examiners at the Canadian Bank Note Company as a result of the "normal, bilateral bargaining and decision-making process", the charge of discrimination on the basis of sex could not be upheld. The union's argument, that the women at the Canadian Bank Note Company had made their own decision to accept the offer of 12.8% after an assessment of the possibilities of winning a strike, was discounted.

On the one hand, Shime argued that it was up to the union to rectify the problem of widening wage differentials and ensure that it was not a party to an agreement which contravened the Labour Relations Act forbidding discriminatory bargaining practices. On the other hand, he argued that "the process of making the decision about wage rates was bilateral, and it is reasonable to infer that it was arrived at in the normal collective bargaining process after a relative assessment of bargaining strength, including the willingness of the members to withdraw their services."³⁸ On the basis of these arguments the arbitrator's decision was in favour of the company's original offer to the union of 12.8%.

3. The Political and Legal Processes

a) Political pressure

After being notified by the Ontario Ministry of Labour that the Ontario legislation would not cover their case, the executive of Local 31 went beyond the collective bargaining process in an attempt to bring polit-

ical pressure to bear on the company both during and after the negotiations.

Contact was made with the CLC and the OFL, both of whom made unsuccessful attempts to change the situation. Shirley Carr, Vice President of the CIC, appealed to the then Minister of Labour Bette Stephenson to put a wider interpretation on the implementation of the Ontario Human Rights Act. The OFL Convention which was held during the strike voted to make representation to the government to amend the Ontario legislation.³⁹

Because of the federal government's connection with the company, appeals were made by the CLC to the Federal Minister of Labour, John Munro, to put pressure to bear on the company to change its bargaining position. Ottawa NDP MLA's Evelyn Gigantes and NDP provincial leader Michael Cassidy both raised questions in the Ontario legislature on the issue of the need to change the present legislation.⁴⁰ The matter was later taken up by the NDP through a private member's Bill. This was defeated in Committee in early 1980.⁴¹

Most of the political pressure and lobbying activity was reported in the media at the time of the strike and while it made the case something of a 'cause celebre' it served little to change the situation for the Steel Plate Examiners. Since the company was not directly involved in selling to the public, adverse publicity of this kind could have little impact. Although the publicity served to drum up some financial support for the strikers from women's groups across the province, most of this arrived after the strike had ended.⁴²

Initially, the executive of the local had been reluctant to take the issue outside the union movement and it was particularly reluctant to take what it considered to be an extreme militant position, for example,

by expanding their picket line to include women's groups or to allow the issue to become the focus of mass demonstrations or meetings.⁴³

Although the women had been aware in the early stages of the strike that political pressure might be needed to change the company's bargaining position, this was seen in terms of the legitimate channels of the democratic political process--letters to MP's, lobbying by recognized pressure groups (the CLC, OFL) and raising the matter with the political parties in opposition at Queen's Park.⁴⁴

While it was unsuccessful in terms of the Examiners' specific case, the political pressure did have some repercussions, however. In early 1980, the Ontario Minister of Labour upgraded the Employment Standards Branch inspectorate by hiring 11 more inspectors in an effort to remove the onus of complaint from the individual employee. As a result, within the first few weeks of the new program, several new cases of wage discrimination were uncovered in the province, even though the Branch is still operating under the original terms of reference of 'equal pay for similar work'.⁴⁵ Premier Davis, under pressure from women in his own party on the issue, in the spring of 1980 promised a new Conservative Bill which would address the issue of equal pay for work of equal value. In making this announcement, however, he cautioned that implementation of this kind of legislation could be difficult.⁴⁶ Given the government's previous record with its existing legislation, the warning is probably appropriate.

b) The Human Rights Commission

The strike ended in December 1977. In January 1978, the Federal government's Human Rights Commission came into operation. During the course of the strike, questions had been raised in parliament about the federal government's responsibility in the case because Section 11

of the Canadian Human Rights Act bases sex discrimination in wages on equal pay for work of equal value. Gordon Fairweather, the Chairman of the Commission, had issued a statement indicating that if the strike was not settled when the Commission came into operation in January 1978, the Commission would examine the case. Although he indicated at that time that the company's affairs fell under provincial jurisdiction, because the company did a large amount of its business with the federal government through the Bank of Canada, it could be argued that it was a government contractor.⁴⁷ In this case, the Human Rights Act had provisions in Section 19 for the governor in council "to make recommendations respecting the terms and conditions to be included in or applicable to any contract, licence or grant."

Questioned on the possibility of using this provision in the Commons, Prime Minister Trudeau replied that this would be "a completely incorrect procedure." "As a matter of principle we do not encourage third parties to involve themselves in disputes by exercising any kind of economic boycott."⁴⁸ It seemed unlikely, therefore, that Fairweather's willingness to take up the issue on the basis of the government's contractual position and its responsibility under the Act would not receive the necessary Cabinet backing.

Nevertheless, when the arbitration failed to meet the union's demands, instead of proceeding with a judicial review of the case, which was initially planned, the union decided to leave the matter in the hands of the federal Human Rights Commission.

The hearing took place in December 1979 and judgement in the case was handed down in March 1980. The tribunal argued, firstly, that the nature of the Act was Human Rights, clearly differentiating it from the

narrower aspects of labour legislation. Secondly, they argued that the unintended scope of the Canadian Human Rights Act had been fairly narrowly defined by parliamentary discussion when it was enacted. During parliamentary debate on the issue it was clear that the Act was not intended to have wide ranging constitutional jurisdiction under civil law. Even here, the residual powers of the "peace, order and good government" clause of the British North America Act had not been invoked which might have ensured that the Act had universal applicability in Canada. The Human Rights Act specifically states that the legislation is to "extend the present laws in Canada to give effect, within a purview of matters coming within the legislative authority of the Parliament of Canada." This was interpreted by the Tribunal to mean that the Act only applies to enterprises falling under federal jurisdiction and that it should not be seen as "an attempt to supplant existing provincial legislation in the field, but rather to supplement it by filling in some of the gaps left by it."⁴⁹

Given this rather narrow interpretation of the scope of the Act, the Tribunal had to decide, it was argued, whether the business of the British American Bank Note Company fell under provincial or federal jurisdiction in the matter of human rights.

Basing their discussion on two precedent cases, it was argued that while the control of paper money, which was the major part of the company's business, was clearly a matter of federal competence, it could not be argued on this basis that the employment practices of the company also fell under federal jurisdiction in respect to human rights.⁵⁰ The employment practices of the company were already covered by the Ontario Human Rights Act and by Ontario labour legislation and there could only

be a basis for supplementing this legislation if the practices of the company's operation in other than actual bank note production amounted to discrimination in their provision of services to the general public. Since the company's employment practices did not come into the specific category of the actual issuing of paper money (such as banking) which would have placed it in the category of the federal government's incidental control, it was decided that the matter of wage discrimination in this case did not come within the powers of the Tribunal.⁵¹

In making its decision, the Tribunal reasoned the case on the basis of precedents which, although they were about employment, were not argued in terms of human rights but in terms of the constitutionality of the question. The question of human rights, therefore, was clearly viewed as subordinate to the question of constitutional jurisdiction. While it could be argued that the Tribunal was unnecessarily narrow in its interpretation of the scope of the Act, it was constrained by political realities. The Tribunal itself acknowledged the Act's weak position both legally and constitutionally by suggesting several ways in which, given the will to do so, parliament could have expanded the Act's efficacy and jurisdiction.⁵²

It has already been noted that, in theory, under the terms of the Act, the federal government had the power to act, but that it did not do so. This reluctance is comprehensible in both political and economic terms. Apart from the sensitive political considerations surrounding the question of federal or provincial jurisdiction in this area, the federal government would have been setting a precedent with fairly broad ramifications for the labour relations system in the private sector if it had extended the concept of equal pay for work of equal

value to include companies with any kind of contractual relations with the federal government. The political repercussions would have been even greater, however, if the Human Rights Tribunal had not been careful to differentiate the human rights aspects of the Act's power from that of labour legislation.

The Human Rights Commission is now in the process of appealing the Tribunal's decision in the Supreme Court of Appeal. Given, however, the fairly weak position of the Act constitutionally and legally, and the politically ascendant position of provincial jurisdictions in recent years, it is unlikely that a decision coming down in favour of the Commission's case will remain unchallenged by the Province of Ontario or the Company.

Conclusions

The above case study has documented one instance in which equal pay for work of equal value became the explicit demand of a union in the process of a collective bargaining situation. But the strike was to all intents and purposes defeated. Although the organizational structure of the unions in the plant was in part to blame for both the discrepancy in pay and for the failure of the strike, it is also clear that the defeat was only possible because the issue was either obscured or deflected by the processes and ideological discourse within which the issue was fought out. This 'mystification' of the real issue of the value of women's work, however, raises contradictions, which upon examination, become very apparent.

While the union was defeated on the issue in this specific instance, the kind of demands they were making will not go down into historical oblivion. For many women inside and outside the labour movement, it has served as yet another example of the limitations of the

present legislation in Ontario. But more than this, a close examination of the structure and ideology of collective bargaining reveals the full weight of the kind of barriers which must be overcome if women are to achieve equal pay in practice.

Concretely, the reasons for the failure of the Examiners to achieve their goals within the collective bargaining and industrial relations system are obviously complex. As far as the local itself was concerned, these related to both organizational and ideological factors.

It seems that the women had only relatively recently begun to feel justified in demanding equal pay. Indeed, the initial demands were not for equal pay for work of equal value but only for parity with the lowest paid men in the plant. Even here, there was some reluctance on the part of the other all-female local at the plant to support Local 31 in this demand. Although all the women in Local 31 supported the strike in principle, it seems to have been a relatively small group within the local who felt strongly enough about the issue to take on the tasks of organization. There seems to have been a profound sense among this group of women that the situation at the plant was intolerable. Having voiced their grievances to fellow workers on a number of occasions, they were taunted by some of the male workers for seeming to be unable to do anything about their situation.⁵³

Their demand only became one for 'equal pay for work of equal value' after the strike had commenced and their attempts to close the gap in pay using existing means were fruitless. In the arbitration case, the union took up the principle of equal pay for work of equal value because it was the only logical way to present their case, which rested on comparability with the male workers. This demand was one which evolved as confrontation proceeded and the issue became more clear. This unplanned approach to

a politically sensitive and yet powerful issue had both advantages and disadvantages. It meant on the one hand that the strike had not been designed specifically to challenge the legislation. This 'political innocence' and the fact that the women were prepared to work within the existing legislation and structures served to highlight the inadequacy of the Ontario legislation in a way which a more politically motivated strike might not have done. Partly because of the local's autonomy in decision making, the nature of their demands developed spontaneously. While there were drawbacks in the lack of strategy, it also meant that there were few constraints on tailoring their strategy in the interests of the long-term. Thus, by the time the strike was over, the issue and its real nature had been brought into clear focus, not only for the women themselves but for a broader public who were following the case, by the apparent audacity of their claim.

On the other hand, the lack of planning and of a clear strategy also meant that there were loopholes in making a consistent case before the arbitrator which gave the company the opportunity to argue that the local's demands were inconsistent and unreasonable. The high degree of autonomy enjoyed by the local may also, in the long run, have worked against them. Owen Shime was perhaps correct in claiming that the union itself was in part to blame for the situation in which the women initially found themselves. The International seems to have done little or nothing to remedy what had been a fairly longstanding practice of hiring and wage discrimination by the employer. Although the strike was legally recognized by the International and the women received a small amount of strike pay for the duration of the strike, they were left to themselves to organize and drum up support for the strike both inside

and outside the plant.

Local 31, like several of the other locals at the plant, is part of an old international craft union. These unions have traditionally taken little interest in 'politicizing' their members or putting their weight behind issues which take on an overt political content. The fact that the strike took place in a craft union shop placed not only organizational, but ideological, constraints on the politicization of the issue inside and outside the plant. Solidarity amongst the women in the plant was not uniformly maintained and the multi-union situation did not help to create it, but tended rather to foster competition between the two all-female locals.

When the collective bargaining process failed, the issue was brought into the political arena. As discussed earlier, the women in the local initially had a great deal of confidence in the democratic political process and they were not reticent about trying to make their complaints heard. But they tended to see politics only in institutional terms. Protest was directed through established pressure groups or members of parliament. Such overt political action as there was was planned in accordance with this view. There was little appreciation on the part of the local that lobbying the NDP or Liberal opposition parties at Queen's Park or writing to the local MLA was unlikely to effect an immediate change in the Ontario law or its implementation on their behalf.

The other side of the coin to the obstacles created by the union organizational structure and the lack of strategy was the collective bargaining and arbitration process itself. As is clear from Shime's report, this took place within a set of ideological assumptions about what constitutes a 'just' or 'fair' wage. Within the discourse of collective bargaining and the industrial relations system, a wage which

has been bargained for is, by definition, a fair one. According to the Labour Practices Act, only where a union knowingly accepts a discriminatory wage rate is such a wage considered discriminatory.

Although it was recognized that the bargaining strength of a particular union can in reality vary and that this would have implications for the outcome, this was not considered to be an argument which justified intervention to rectify unequal or discriminatory wage practices on the part of the arbitrator. The onus, therefore, to achieve a 'fair wage' was placed entirely with the union. In other words, the structure of collective bargaining itself, for the purposes of reaching an arbitration decision, was considered to be a situation in which the union and the employer meet as equals. Within the discourse of the industrial relations system, therefore, collective bargaining is extracted from the unequal relationship which exists structurally between capital and labour and is assumed to take place between equals.

The findings of this case study have immediate practical implications for the women's movement. But the case study also raises interesting questions for further study by sociologists. Has the present Ontario legislation, for instance, contributed to the problem of job ghettoization because one means of getting around the legislation is through discriminatory hiring and training practices? To what extent does the structure and practice of trade unions help to maintain job ghettos? To what extent is it possible that the demand for equal pay for work of equal value could present a challenge to the pattern of rewards which now exist in society, and what are the implications of this? These are just some of the questions which might be pursued by those interested in further research in this area.

But there are also practical lessons to be drawn from this case study. Firstly, women in the union movement must learn to work and fight together for equal pay. Traditional, particularistic, union or trade interests and loyalties must be re-examined in the light of the equal pay principle. This may mean struggles will emerge within unions and between unions as much as they do with employers. Secondly, women cannot afford to rely solely on the legislative process to change their situation. Legislation must be interpreted and put to the test before its effectiveness can be judged. More progressive legislation can only back-up militant and united union struggle for the abolition of wage discrimination in practice at the work place.

FOOTNOTES

- 1 Besides the Federal Human Rights legislation, B.C. and Quebec do not limit equal pay rights to the same work. But there are constraints in both provinces on the universal application of equal pay for work of equal value. See Lynn McDonald, "Equal Pay--How Far Off?" Canadian Dimension, vol. 14, no.6, 1980.
- 2 See Julie White, Women in Unions, Ottawa: Advisory Council on the Status of Women, 1980, for statistical information on women in unions in Canada.
- 3 Affidavit of Shirley Cooligan, President of Local 31, Steel Plate Examiners Union, August 2, 1978.
- 4 Union brief to Arbitration Hearing. February 7, 1978.
- 5 Arbitration Decision of Mr. Owen Shime, April 13, 1978.
- 6 Interview with Lynn Kaye, Counsel for the union, April 1980.
- 7 The Decision of the Canadian Human Rights Tribunal, February 26, 1980, p.19.
- 8 Interview with Shirley Cooligan, former President of Local 31, Steel Plate Examiners Union, April 1980.
- 9 The details of the company's operations were taken from Owen Shime's Arbitration Decision, op.cit.
- 10 The details of the company's financial position were taken from The Financial Post Corporations Service, revised edition, December, 1979.
- 11 Union brief to Arbitration Hearing, February 7, 1978.
- 12 Interview with Personnel Officer at British American Bank Note Co., April 1980.
- 13 Other than strike pay, the International did very little to help the local win its strike or the arbitration. In the latter case the local received considerable help from CUPE.
- 14 Arbitration Decision, op.cit.
- 15 This description of the work and the workplace is based on the union brief, the company's brief and the Arbitration Decision, op.cit.

- 16 Interview with Shirley Cooligan and Maureen McKenney, January 1978.
- 17 This does not account for the genesis of wage discrimination. In an interview with the Ottawa Journal in December 1977, R.P. White, Vice Chairman of the company is quoted as saying that "it was traditional in the industry for men and women to be segregated in different unions and job categories." He also observed that a lot of women were second wage earners but contended that this was not a reason why they received lower wages."
- 18 Letter dated February 25, 1977, from Maureen McKenney, Secretary of the local to Industrial Relations Manager at British American Bank Note Company.
- 19 Union brief to Arbitration Hearing, op.cit.
- 20 Ibid
- 21 Letter from Employment Standards Branch of the Ontario Ministry of Labour, May 26 1977.
- 22 This account of the negotiations was taken from the arbitration documents and from interviews with Shirley Cooligan, union president and Lynn Kaye, the local's counsel.
- 23 This account is based on interviews with Shirley Cooligan and Maureen McKenney in November 1977 and January 1978.
- 24 Affidavit of Shirley Cooligan, August 2, 1978.
- 25 There was some confusion on the part of the union as to whether the case could legally be put to arbitration. According to Cooligan the union was told during the mediation proceedings in November that the case was not eligible for arbitration. When it was finally realized that it was, negotiations began with the company through the mediator as to the terms of reference for arbitration.
- 26 The company changed its trucking contractor during the strike because Brinks drivers refused to cross the picket lines. The company then hired Ryders Trucking Co. whose drivers crossed the picket line.
- 27 Interviews with Shirley Cooligan and Maureen McKenney with Mr. Kujack of the Printers Union, November 1977.
- 28 Many of the women in local 31 were heads of single parent families or the main bread winners in their family.

- 29 Citizen, December, 1977
- 30 Union reply to company brief to Arbitration Hearing
- 31 Union brief to Arbitration Hearing, op.cit
- 32 The union made the case in its rebuttal to the company's brief that the terms of reference were clear and that they had been the point of protracted negotiations between the parties for almost a week in mid-December indicating that the intention was clear. Agreement to Arbitrate December 17, 1977.
- 33 Agreement to Arbitrate, December 17, 1977.
- 34 Arbitration Decision, op.cit.
- 35 Ibid
- 36 Company's Brief to Arbitration Hearing, op.cit.
- 37 Arbitration Decision, op.cit.
- 38 Ibid
- 39 Press reports, November-December, 1977.
- 40 Press reports, December 1977.
- 41 Maclean's Magazine, April 1980.
- 42 Interview with Shirley Cooligan and Maureen McKenney, January 1978.
- 43 Discussion with Shirley Cooligan in late October, 1977.
- 44 Ibid
- 45 Citizen, April 1980.
- 46 Davis stated that he favoured a program of affirmative action. This largely skirts the problem of wage discrimination in job ghettos by concentrating on upgrading the skills of a limited number of women. The solution is thus individualized. Citizen, April 15, 1980.
- 47 Citizen, December 1977
- 48 Ibid
- 49 The Canadian Human Rights Act, Tribunal Decision, February 26, 1980.

- 50 The cases used as precedents were Construction Montcalm vs. Minimum Wage Commission and one which was referred to as the Stevedoring Case. Counsel for the respondent made his case on the former while the Commission's Counsel made his case on the latter. Both cases concerned the question of federal or provincial jurisdiction over labour relations for firms whose operations included some connection with areas of federal jurisdiction, e.g., aeronautics and shipping.
- 51 The Tribunal's decision was based on the Montcalm case in which Justice Baetz had argued that although the company was engaged in operations (the construction of an airport) which clearly came under federal jurisdiction, its employee relations were fundamentally an integral part of these operations and therefore this came under provincial jurisdiction.
- 52 Tribunal decision, op.cit.
- 53 Based on interviews with Shirley Cooligan and Maureen McKenney October 1977, November 1977 and January 1978.