

Alberta Federation of Labour Brief to the Pay Equity Task Force

June 2002

The Alberta Federation of Labour (AFL) is pleased to have this opportunity to present its views on pay equity to the Task Force.

The Federation represents 112,000 Albertans organized in twenty-nine different unions. Our members work in every sector of the economy and live in communities throughout the province. Although the mandate of the AFL is specifically to represent the interests of unionized men and women and their families, we have always spoken out on behalf of unorganized workers in the province on issues which affect them.

The Alberta Federation of Labour has a long-standing policy supporting pay equity and of encouraging our affiliated unions to negotiate pay equity provisions in to their contracts in both formal and informal ways.

Despite the fact that Alberta is the only province in Canada with no pay equity legislation, a majority of Albertans support the principle. The fact that the government of Alberta has steadfastly refused to consider legislation in support of a fundamental democratic right contained in the Canadian Human Rights Act is an ethical and political problem that Albertans will have to deal with sooner or later.

This submission will focus on three areas of particular interest to the Alberta Federation of Labour:

1. Problems with the current complaint driven system and possible alternatives to it.
2. The role of unions and free collective bargaining in pay equity resolution.
3. Expanding the parameters of pay equity evaluations.

In addition, there we would like to offer several additional brief comments in response to particular questions raised in the Pay Equity Task Force Discussion Paper.

Part One: Problems with the current Canadian approach to pay equity

Although not strictly within the purview of this Task Force, there is something inherently wrong with a system where a right guaranteed under our national human rights act is not enforced in a uniform manner across the nation. Right now there is a confusing, chaotic patchwork of provincial legislation on pay equity. In some provinces, only public sector workers are covered, in others, both public and private sector, and in Alberta, of course, there is no pay equity protection at all. Methods of enforcement are equally diverse.

Pay equity is a human right, not a subset to labour legislation. Yet it is treated in actuality as if it were labour legislation. All persons covered by the federal labour codes are given the protection of the Canadian Human Rights Act - everyone else is covered by whatever legislation exists in the province in which they reside. As a consequence, Canadian citizens now enjoy greater or lesser human rights varying by province of residence or place of employment.

The intent of the inclusion of a pay equity provision in the Canadian Human Rights Act is clear: to identify and eliminate a particular form of sexual discrimination - discrimination on wages and benefits for work done by women. The particular form of enforcement of that intent in the CHRA is based upon a complaint driven system.

There are many specific shortcomings of this complaint driven model. It is cumbersome, inefficient, too-expensive and time-consuming. It is uneven in application. It creates adversarial relationships between employees and their representatives (mostly unions) and employers. Given that employer/employee and employer/union relationships already have more than enough other stresses leading to adversarial relationships, this is a serious labour relations concern.

These drawbacks are all linked to each other. The adversarial relationship between union and employees on one side and employers on the other has resulted in endless litigation. That litigation draws out cases in an alarming and unacceptable fashion. It also enmeshes all parties - including the Canadian Human Rights Commission - into extremely expensive and seemingly endless legal challenges.

The time and expense of these cases are a hardship for large unions - and put the process beyond the means of unorganized workers.

Large private sector employers have strenuously fought against imposition of pay equity (Air Canada, Bell). Part of the reason for this can be attributed to the loss of competitive advantage if one employer in a sector adopts pay equity while their competitors do not. Most compellingly, the current system is not achieving its objectives. Although slightly diminished, the gap between women's and men's income persists, as does the unexplained portion of the wage gap.

What is to be done?

The AFL suggests that a new, proactive mechanism be put in place. Pay equity legislation could be modeled on the federal Employment Equity Act, which establishes clear steps for identification and removal of barriers to the hiring and promotion of women and visible minorities. Moreover, it establishes a timeline wherein all employers covered by the Act must complete a review of their practices and correct inequities. Compliance is ensured by audits undertaken by the Canadian Human Rights Commission - removing the "complaint" trigger necessary under pay equity provisions. There should also be substantial penalties assessed for failure to meet set timelines for compliance.

Audits could be augmented by reporting from inspectors empowered under the Canada Labour Code Section 182(2). By simply amending the section to read that inspectors "must" notify the CHRC or file a complaint with that Commission, workplace inspectors could provide a valuable compliance tool.

Such an audit measure would also address concerns about maintaining pay equity over time and ensuring that workplace and job changes are addressed in a timely fashion. This kind of proactive system could then be augmented by a system that would investigate complaints from employees or unions on pay equity issues.

Part Two: Unions, Free Collective Bargaining and Pay Equity

Although unions have been the main vehicles through which employees have accessed pay equity legislation, and despite the fact that many unions have made pay equity a priority, there is good reason not to closely enmesh pay equity systems with the collective bargaining system.

To begin with, a large proportion of workers in Canada are not organized. Any system of monitoring or enforcement of pay equity that relies on unions or the collective bargaining process would exclude such workers from equal access to the process. Secondly, pay equity must not become a collective bargaining chip. It is a human right, not a negotiable benefit. Although unions may have an important role to play in protecting their members and in accessing those members' right to pay equity, pay equity must not be seen as a labour relations issue.

Finally, there is the critical Section 11(6) of the Canadian Human Rights Act which states that no employer shall reduce wages in order to eliminate a pay equity violation. Yet any inclusion of pay equity into the collective bargaining process will in fact produce that effect. Collective bargaining is a process of compromise and give-and-take. For unions and their members to gain benefits or rights, they must be able to give up other things. For the inclusion of employer paid pension plans, for example, unions typically gave up immediate wage increases.

For a union to secure pay equity adjustments at the bargaining table, they would undoubtedly have to give up otherwise warranted general wage and benefit increases. This would be tantamount to reducing the wages and benefits of the workforce in order to achieve pay equity - something expressly prohibited by the CHRA.

What role should unions play?

Unions should continue to be advocates for their members as is the case currently. They should maintain the right to register complaints and to engage in consultation with employers regarding pay equity issues and implementation.

One model worth considering could be based upon joint worksite health and safety

committees. These at least theoretically operate for the benefit of both workers and employers.

An effective joint 'establishment' pay equity committee would have to be mandatory, with equal representation from employers and employees, one co-chair drawn from each side, with full access to records and powers to investigate. Management representation would need to be at the decision-making level. These committees could be given ongoing oversight responsibilities and the power to refer unresolved differences to a dispute resolution system.

Part Three: Expanding the parameters of pay equity evaluations

One area where the current system seems to fail is in the cases where an employer does not have any comparable male predominant occupational group. In such cases, systemic undervaluation of women's work can easily continue unchecked. The use of a proxy that allows comparisons to similar male predominant occupational groups with other employers could address part of this problem.

Further, historical incumbency can lead to job classifications that are currently undervalued because they were previously a female predominant occupation despite the fact that they may no meet that definition today.

The definition of establishment should encompass all operations of an employer with the exception of those whose business activities are separated into independent and unrelated fields - regardless of how many bargaining units that encompasses or whether it contains unionized and non-unionized sections.

Part Four: Additional Comments

The Alberta Federation of Labour supports the continued jurisdiction of the Canadian Human Rights Commission over pay equity. The CHRC has built up an impressive expertise in this area that would have to be reconstructed with any new agency.

However, given that pay equity issues are consuming an inordinate amount of the staff time and budget of the CHRC in comparison to the proportion of complaints related to pay equity, if the CHRC is to continue to deal with pay equity, its resources would have to be expanded appropriately.

If the decision is made not to continue using the Canadian Human Rights Commission and the Canadian Human Rights Tribunal as the agencies responsible for overseeing and adjudicating pay equity, then a similar arms-length agency dedicated to pay equity issues alone would be preferable. The issue requires a fine degree of understanding of the history of pay equity in Canada and expert legal knowledge in the area.

Another significant barrier to implementation of pay equity is the growing integration of service sector employment arising from international and bilateral trade agreements. The liberalization

of trade in services has made it possible and perhaps even likely for large employers to contract work out of the Canadian jurisdiction to avoid pay equity adjustments. For example, Bell Canada has successfully delayed a pay equity adjustment for telephone operators for over 14 years through an endless series of legal challenges. During that period, Bell contracted out operators work to the United States.

Pay equity adjustments will not accomplish anything if the end result is the export of the jobs in question to another country. This is one of the reasons that the labour demanded fair wage provisions in all trade agreements. There are few ways to deal with this problem aside from a complete rethinking of our position on global trade.

Perhaps a prohibition on contracting out of the jurisdiction of federal pay equity laws could be considered where it can be shown that avoiding pay equity was the reason for the action.

Conclusion

The Alberta Federation of Labour is a strong proponent of a more efficient and proactive pay equity system. Although there is still a role for a complaint process in the system, it is time to institute positive obligations upon all employers falling within the scope of federal pay equity laws. These obligations should be time constrained, with penalties for non-compliance.

Such a proactive approach should be enforced by inspectors empowered to do employer audits, and should include mandatory employee/union participation to help ensure compliance and ongoing upkeep.

Hopefully a new, more effective approach to pay equity at the federal level will create the political, social and economic pressure necessary to compel provincial governments to enact similar mechanisms.

Respectfully submitted,

Alberta Federation of Labour