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GROUND-BREAKING PAY EQUITY LAWSUIT HEADED FOR TRIAL: AN INTERVIEW WITH CSEA RESEARCH ANALYST MARLENE KIM

by Mary King

The California State Employees Association (CSEA), SEIU Local 1000 is pursuing the largest employment discrimination lawsuit ever filed in the history of the 1964 Civil Rights Act. Their suit, on behalf of 100,000 past and present state employees, charges the State of California, Governor Deukmejian and the State Department of Personnel Administration with paying discriminatory wages on the basis of sex.

CSEA filed suit in November 1984. In July 1986, the state petitioned the court for a "summary judgment," in effect claiming that there was so little substance to the case that it need not go on to trial. Last December, in a victory for CSEA, U.S. District Court Judge Marilyn Hall Patel found that CSEA had "presented sufficient evidence on all elements of their case" to require a full trial.

CSEA staffer Marlene Kim, very optimistic about the outcome of the upcoming trial, says that winning the suit will "put pay equity back on the agenda nationwide. Since many regard California's Civil Service as a leader in personnel issues, evidence of ongoing discrimination here should have a major impact elsewhere."

Background to the Suit -- In 1981 then-Governor Jerry Brown signed into law a policy mandating (1) that the salaries for state jobs held mostly by women be equal to those of other state jobs involving similar levels of skill, effort, responsibility and comparable working conditions, and (2) that the Department of Personnel Administration (DPA) report annually on progress toward this goal.

After the DPA's first report indicated that indeed "women's jobs" were paid significantly less than were other comparable jobs, the Legislature approved spending \$77 million to bring up women's depressed wages. In the meantime, Governor Deukmejian had taken office, and he vetoed the Legislature's attempt to compensate "women's jobs" more fairly, despite a \$1 billion surplus in the Treasury. During ensuing negotiations, the Governor implied that any pay equity increases must come out of other people's salaries. At this point the union sued in Federal court.

CSEA's Approach -- Many in the labor movement have been pessimistic about struggles for pay equity, to obtain compensation for "women's skills" equal to that for men's, since Judge Anthony Kennedy decided for Washington State against AFSCME in September 1985. Kennedy, Reagan's current nominee for the U.S. Supreme Court, made this decision at the appellate level, one level above the court where CSEA's suit is now being judged.

However, according to Marlene Kim, the lesson to be learned from that case is not that pay equity is dead, but that successful discrimination cases must include more than a job evaluation study showing that women are being underpaid. Judge Patel confirms this point, stating that "job evaluation studies and comparable worth statistics... must be supplemented by independent evidence of discrimination in order to establish discriminatory intent".

CSEA's case demonstrating discriminatory intent differs from that made by AFSCME, in that it does not rest on comparable worth arguments or include a job evaluation study. First, and most important in Kim's opinion, CSEA is presenting evidence that when the state's salary system was set up in the 1930's, it explicitly took into account the gender of employees in establishing salaries, implying that women should and would be paid less than men.

This allegedly discriminatory salary structure was never overhauled. In fact, State

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personnel policy requires that it be maintained, by mandating the continuance of existing salary relationships. The result is that the average salary of women employed by the state in 1986 was 75% of that of men, nearly identical to the 74% of men's wages earned by women in 1938.

Judge Patel points out that practices that were discriminatory but legal in the past became illegal in 1972 when Title VII of the Civil Rights Act began to apply to employees of public agencies. Since 1972, public employers are liable for continuing any discriminatory policies.

The second component of CSEA's case involves investigating the salary setting process itself and showing how it discriminates against women. For example, when determining wages, the state considered the salaries other employers were paying, including some firms which it knew had lost or been forced to settle court cases showing them to discriminate against women.

The third prong of the CSEA suit is anecdotal evidence of sex discrimination. Union staffers collected stories from both past and current employees about their experiences of discrimination on the job. Approximately 40 workers testified that they were told to apply for clerical jobs when attempting to apply for higher-paying "men's jobs"; that they did not receive training that they should have received; and that they knew they were denied jobs, transfers and promotions because the state "wanted a man." Discriminatory treatment was alleged by women even in "women's jobs."

CSEA also presents more traditional evidence of discrimination. The union has shown that men and women hired at the same level receive vastly different salaries after eight years in state service, with men outpacing women "to an extraordinary degree." CSEA is preparing to demonstrate that occupational segregation by sex is very widespread. For example, state job announcements specified which sex would be hired in which occupations through the early 1970's.

The State's Defense and CSEA's Response -- The state claims (1) that it pays prevailing market rates, and isn't liable for the market, which it describes as "an expression of human culture which reflects inherited biases and stereotypes about women and women's work", and (2) that it has adopted an affirmative action plan, which proves that it does not intentionally discriminate against women.

However, the state is not required to pay prevailing wages, only to consider them, while it is mandated to pay "like salaries...for comparable duties and responsibilities." Further, as Judge Patel has pointed out, the State employs so many people that it strongly influences "market rates." In addition, the state has always taken into account many factors other than market rates when setting salaries. Since 1981, when salaries began to be bargained, the state has set wages without surveying prevailing rates.

The affirmative action defense is also flawed according to Marlene Kim. First, the state's affirmative action plan has been roundly criticized as ineffective by both the State Personnel Board and the state legislature. And second, following an affirmative action plan and recruiting women into some jobs which are currently male dominated is quite compatible with discrimination in other ways and areas.

Conclusion -- CSEA has put together an impressive case to demonstrate that women have been consistently underpaid by the state of California. This effort has cost the union over \$1 million. Marlene Kim predicts that winning this case will give women and their unions greater bargaining power on pay equity issues, and establish a new direction for pay equity. Most importantly in Kim's eyes, it confirms the fact that women are paid less than men simply because they are women; this knowledge by itself will give women workers more strength to fight for the higher wages they deserve.

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