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# Unions and Pay Equity Bargaining in Canada Les syndicats et la négociation de l'équité salariale au Canada Sindicatos y negociación de la equidad salarial en Canadá

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### Résumé de l'article

Au cours des années 1980, un certain nombre de gouvernements provinciaux ont introduit des politiques pro-actives d'équité salariale afin de concrétiser d'une manière plus efficace le principe d'un salaire égal pour un travail de valeur comparable. On a fait adopter des lois couvrant le secteur public au Manitoba, en Ontario, à l'Île-du-Prince-Édouard, en Nouvelle-Écosse et au Nouveau-Brunswick, mais la mise en place s'est également effectuée par la négociation collective initiée par le gouvernement, par exemple, à Terre-Neuve. La province de l'Ontario a intégré le secteur privé, comme l'a fait aussi le Québec dans sa loi de 1996.

Toutes ces initiatives ont créé chez les employeurs l'obligation de négocier l'application de l'équité salariale avec des négociateurs accrédités et elles ont donné lieu à l'établissement de structures de négociation distinctes. Même si ces innovations ont obligé les employeurs à agir de façon pro-active, il devenait évident que les syndicats joueraient un rôle central, que la mise en oeuvre de l'équité salariale soit voulue par un mandat légal ou amenée par un mécanisme administratif.

Le principe qui sous-tend l'équité salariale est à l'effet que les salaires des femmes ont historiquement été sous-évalués, qu'ils doivent être rectifiés par la comparaison d'emplois fortement occupés par des hommes avec des emplois fortement occupés par des femmes et que l'ajustement des taux de salaires se fasse de manière à ce que des emplois de valeur comparable reçoivent une rémunération de valeur égale. Mis à part certaines variations d'ordre technique, les juridictions canadiennes utilisent une méthodologie largement similaire : l'identification des emplois à dominance masculine et ceux à dominance féminine ; le choix ou le design d'un outil de comparaison dont la neutralité est assurée quant au genre ; l'évaluation des emplois basée sur l'habileté, l'effort, les responsabilités et les conditions physiques de travail ; suivent le calcul et la planification de l'implantation des corrections de salaires. Cette approche a débouché sur une méthodologie d'évaluation complexe des emplois, souvent fortement quantitative, alors qu'historiquement c'était une fonction managériale, basée sur une norme masculine.

De plus, les écarts traditionnels de salaires apparaissent naturels ou logiques aux participants à la procédure d'évaluation des emplois, alors qu'ils sont fondés sur des notions de travail et d'habileté biaisées en faveur d'un sexe. C'est pourquoi il devient important que les syndicats se sentent responsables et impliqués à chacune des étapes du processus de négociation collective de l'équité salariale. Cependant, les syndicats au Canada, en Angleterre et aux États-Unis ont été la cible de critiques pour l'exclusion historique des femmes, un vestige lié à une culture contemporaine à tendance masculine, accompagnée d'une relativement faible représentation des femmes dans le gouvernement des organisations syndicales. Même s'il en est ainsi, il faut reconnaître qu'une étude de la représentation, du leadership, de l'organisation syndicale distincte et d'une reconceptualisation des enjeux a signalé des améliorations dans ces domaines. De plus, des études à la fois d'envergure nationale et internationale ont révélé que l'écart de salaire dû au sexe est plus faible pour des emplois syndiqués que pour des emplois non syndiqués. Néanmoins, les travaux de recherche au Canada et en Grande-Bretagne ont mis en évidence la difficulté de traduire des gains tirés de structures d'égalité interne dans des succès à la table des négociations, alors que les femmes se retrouvent encore en minorité dans la plupart des équipes de négociation.

Des études antérieures sur l'équité salariale au Canada ont fait état de résultats positifs de l'implication des syndicats au Manitoba et dans la fonction publique fédérale. Cependant, elles donnent aussi une vision négative de leur rôle en Ontario. Les travaux américains sur la mise en oeuvre du concept de valeur comparable présentent la participation des syndicats sous un jour peu reluisant, la tendance étant au renforcement des hiérarchies de salaires et de statuts plutôt qu'une correction aux rémunérations discriminatoires. Étant donné les comptes-rendus apparemment mitigés sur l'égalité des femmes, l'objectif de cet essai est de vérifier dans quelle mesure les syndicats au Canada représentent les intérêts des femmes dans le processus de négociation sur l'équité salariale. Faisant appel à une méthodologie basée sur l'étude de cas et retenant comme cadre de référence la théorie du pouvoir chez Giddens, cette recherche a tenté d'analyser dans quelle mesure les syndicats ont pu contrôler le processus de négociation sur l'équité à l'avantage des femmes ; cela est d'autant plus important vu la tendance chez les dirigeants à contrôler et à endiguer le processus de négociation sur l'équité salariale.

En référant aux négociations qui ont fait l'objet d'études dans la fonction publique de l'Ontario et dans le secteur de la santé à Terre-Neuve, on constate que les syndicats ont effectivement fait valoir les intérêts des femmes dans le processus de négociation sur l'équité salariale, quoique cet effort variait au sein des syndicats selon le stade d'implantation et selon les négociateurs.

En gardant à l'esprit le concept de pouvoir chez Giddens, on constate que la dynamique du pouvoir inhérent à la négociation dépendait largement de l'habileté des syndicats à identifier et à utiliser les ressources à leur disposition de façon à influencer la direction des négociations à l'avantage des femmes. Les syndicats qui agissaient dans ce sens avaient recours non seulement aux techniques conventionnelles de négociation mais encore utilisaient les outils clés de l'analyse fondée sur le sexe et leur expertise au plan de la méthodologie propre à l'équité salariale. Ces éléments se conjugaient principalement avec les liens formels des négociateurs avec les structures internes d'égalité et la connaissance que ces derniers possédaient des politiques d'égalité, ceci en association avec la mise en réseau des femmes aussi bien à l'intérieur qu'à l'extérieur du mouvement ouvrier.

Comparées à la trame négative évidente de la recherche antérieure sur le rôle des syndicats dans la mise en application de l'équité salariale, ces études de cas mettent en évidence la face positive de l'action du genre dans la négociation sur l'équité, même si elles démontrent également que des intérêts conflictuels à l'intérieur des syndicats ou entre eux peuvent jouer contre l'équité salariale.

Au plan pratique, la recherche sous-estime l'importance de l'action syndicale au-delà d'une préoccupation centrale à l'effet d'accroître la représentation des femmes au sein des structures d'égalité et des politiques, de façon à s'assurer de liens étroits entre ces réformes au plan de l'égalité et les négociateurs. En faisant une place aux femmes dans les équipes de négociation, ce serait là un premier pas, mais qui devrait être complété par le développement d'une expertise à la fois dans l'analyse fondée sur le genre et la méthodologie de l'équité salariale chez tous les négociateurs, hommes et femmes, sans égard à l'étape du processus dans lequel ils sont impliqués.

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# *Unions and Pay Equity Bargaining in Canada*

SUSAN M. HART

*Provincial government pay equity policies require the negotiation of pay equity in unionized workplaces. The methodology is complex and unions have to be knowledgeable and committed to rectifying discriminatory wages. According to the literature, Canadian unions have shown varied levels of effectiveness regarding their pursuit of women's equality, and this article explores how well these unions represent women's interests during pay equity bargaining. Based on case studies of the Ontario public service and health care in Newfoundland, the article concludes that the most effective unions supplemented their conventional negotiating techniques with gender analysis and pay equity expertise. These tools were developed primarily through negotiators' formal links with internal equality structures and their knowledge of equality policies, together with women's networking inside and outside the labour movement.*

## ***THE ROLE OF UNIONS IN PROVINCIAL PAY EQUITY INITIATIVES***

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The gender wage gap between full-time, year round workers in 1987 was still 34%, only 4% less than in 1977 (Weiner and Gunderson 1990), and during the mid to late 1980s a number of provincial governments introduced pro-active pay equity policies in order to more effectively achieve equal pay for work of equal value. Unlike the complaints-based model featured in existing human rights codes, these new policies recognized the systemic nature of wage discrimination. Legislation was passed to cover the public sector in Manitoba, Ontario, Prince Edward Island, Nova Scotia

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and New Brunswick, but implementation was also through government-initiated collective bargaining, as in Newfoundland, Ontario, and subsequently Quebec in 1996, also included the private sector.

All these initiatives required the employer to negotiate the implementation of pay equity with certified bargaining agents. As McDermott pointed out, "the entire pay equity process... is negotiated between the union and management" in Ontario (1991: 122), and a pay equity plan was to be negotiated "in good faith" (Ontario Government 1988: 14[2]). Similarly, in Prince Edward Island and Nova Scotia, union-management negotiations were to take place "throughout the pay equity process" (Prince Edward Island Government 1988: 13[1]; Nova Scotia Government 1989: 18[1]). Reflecting the emphasis upon a negotiated process, the Acts in Manitoba, Prince Edward Island, Nova Scotia and New Brunswick included good faith bargaining and information clauses. In Ontario, early rulings by the Pay Equity Hearings Tribunal required employers to disclose information relevant to pay equity, in order to demonstrate good faith bargaining (for example, Gloucester 1991; Haldimand-Norfolk 1991). Overall, separate bargaining structures were required for pay equity (Weiner and Gunderson 1990), and in Ontario, Pay Equity Commission guidelines recommended separate union-management committees (1988). In Quebec, employee representatives on pay equity committees were to be union appointed in organized workplaces (Quebec Government 1996).

Following the Newfoundland government's introduction of a pro-active policy, a Pay Equity Agreement (PEA) was signed in 1988 by five public sector unions, the government and employers. A multi-party union-management Pay Equity Steering Committee (PESC) was established, with overall responsibility for implementation through a process requiring good faith bargaining (PEA 1988: 6[1]) and information disclosure (3[11]).

Even if these initiatives obligated employers to act pro-actively, it was clear that unions were to play a central role, whether pay equity implementation was driven by legal mandate or administrative mechanism. Even in the federal case, where pay equity has taken a primarily legal route in the last decade, the original, contested job evaluation study was the result of an earlier bargaining process between the public service unions and the Treasury Board (Ouimet 1988).

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### ***NEGOTIATING A COMPLEX PAY EQUITY METHODOLOGY***

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The underlying premise of pay equity is that women's wages have been historically undervalued and this situation is to be remedied by the comparison of male dominated jobs with female dominated jobs and the

adjustment of wages so that jobs of equal value receive equal pay. Apart from some technical variations, Canadian jurisdictions use a broadly similar methodology: designation of female and male dominated jobs; selection or design of a gender-neutral comparison tool; evaluation of the jobs based on skill, effort, responsibility, and working conditions; calculation and scheduling of wage adjustments.

This approach has resulted in a complex, often heavily quantitative, job evaluation methodology, which historically has been a management function and based on a male standard. Moreover, traditional pay differentials often appear “natural” or “logical” to participants in the job evaluation procedure, whereas these differentials are actually based on gender-biased notions of work and skill (Dickens 1992; Haignere 1990; Steinberg 1991). Unless union negotiators are aware of this fact, it may well be that any challenges to the status quo, with the possibility that women will earn more than men, will be seen as irrational. As the Pay Equity Hearings Tribunal (PEHT) commented:

Deeply held attitudes meant the gender of a job class was viewed in the assessment of its value; if it was “women’s work,” it often led people, without any conscious decision making, to give less value to the work (Haldimand-Norfolk 1991: 116).

The need for a knowledgeable and committed union at each step of the pay equity process is confirmed by this observation made by a labour lawyer with experience negotiating under the Ontario legislation:

[there are] a wide variety of roads towards pay equity. There are [pay equity] plans which will quickly and effectively close the wage gap between female and male employees and plans that will maintain that gap through their definitions of job class, and their approaches to job evaluation (Lennon-Shilton 1989: G-2).

Clearly, unions play a crucial role in the achievement of pay equity in unionized workplaces (see also Armstrong and Armstrong 1991; Steinberg 1991). Given what appears to be a mixed record on women’s equality (White 1993), including pay equity (Acker 1989; Ellis-Grunfield 1987; Kainer 1998), the aim of this article is to explore how well Canadian unions fulfill this role of representing women’s interests during the pay equity bargaining process.

### ***CONCEPTS AND METHODOLOGY***

A comparative compilation of pay equity wage adjustments, covering a large number of unions, perhaps across different provinces, would tell us what monetary gains the unions involved were able to achieve for their

women members, and it may well be that such an exercise would be a complementary step to the research discussed in this article. Here, however, the question of how well unions represented women's interests will be addressed through the exploration of a bargaining process which is often hidden from observation. The emphasis on how far unions were able to control the pay equity bargaining process to women's advantage reflects the need for unions to negotiate every stage of a technical and complicated pay equity methodology with knowledge and commitment. This is all the more important when we consider management's general tendency to contain and control the process and outcome of pay equity (Steinberg 1991).

The focus on control also reflects Giddens' theory of power (1984) used in the analysis of the research material. His definition of power as taking control of the direction of events by utilizing available resources can take account of the need for control over the process, seen as crucial by equal pay advocates (for example, Fudge and McDermott 1991; Steinberg 1991). This is because it incorporates agency, both in the individual and collective sense. Moreover, his theory of power allows for the possibility of the less powerful in an established unequal relationship enhancing their power, especially important when we consider how "unequal power relations shape the design, implementation and meaning of pay equity" (Fudge and McDermott 1991: 15). Giddens' concept was considered more suitable for analytical purposes than the resource dependency or strategic contingencies theories of power, which, as noted by Hardy and Clegg (1996), ignore the embedded interests of dominant groups, including management, in assuming the use of power by employees and/or unions to be illegitimate. Foucault's theory of power allows limited space for individual or collective action, making it difficult to account for the use of power to attain specific objectives (Hardy and Clegg 1996). Although the actor-network theory does allow for agency (Law and Hassard 1999), the methodology was seen as too restrictive in its detailed analysis of conversations (see, for example, Dugdale 1999).

Case study methodology is the best approach when we are interested in industrial relations process (Gardner 1991), even allowing for the difficulty of generalizing from one or two case studies. To compensate somewhat for the latter, a primarily qualitative methodology aided in the analysis of complex and dynamic relationships between the parties in the pay equity bargaining studied, and more easily accounted for agency and the significance of individual behaviour than would a quantitative methodology. Applying Bryman's differentiation between a "typical" and "unique" case (1988), the provinces of Ontario and Newfoundland were selected as case studies. Ontario's pay equity legislation was broadly "typical" of other

provincial pay equity laws passed in the 1980s in so far as it required the employer to be pro-active and to negotiate pay equity in unionized workplaces, and it covered the public sector. Newfoundland's pay equity initiative was "unique" in that it was not legislated but introduced administratively, presenting an interesting contrast to the Ontario case.

These particular unions are included because of the timing of the study and their participation in the earliest pay equity bargaining: in the Ontario public service from 1988 to 1991 and in the Newfoundland health care sector from 1988 to 1992. Fifty-five semi-structured interviews were conducted during 1991 and 1992 with union, employer and government pay equity negotiators; chairs of women's committees; labour lawyers; and (Ontario) Pay Equity Commission Review officers. Bearing in mind Giddens' theory of power, verbatim transcripts were subjected to a textual analysis to explore how far unions had controlled the direction of negotiations through the utilization of resources during pay equity bargaining. Information and analysis were verified wherever possible through the triangulation process. Analysis of government, employer and union documents supplemented the interviews. The article continues with a review of the literature on women and unions, including previous pay equity studies, to complete a contextual framework for the case studies.

### ***UNIONS AND WOMEN'S EQUALITY***

Unions in Canada, Britain and the U.S. have been criticized for their historical exclusion of women (Frager 1983; Milkman 1980; Rubery 1978), a legacy connected to a contemporary, male dominated culture with a relatively low representation of women in union governance (Briskin and McDermott 1993; Kumar 1993; White 1993). Even so, Date-Bah remarked that Canadian unions are portrayed in the literature as "having a stronger commitment to organizing women and a greater responsiveness to women's concerns [than U.S. unions]" (1997: 211). She attributed this largely to their introduction of more innovative equality policies than their American counterparts, as well as being more closely linked to outside women's organizations. Briskin and McDermott (1993), however, listed a number of obstacles still existing in Canadian unions:

union complicity in the gendered segmentation of the labour market; union support for traditionalist ideologies about women's work, breadwinners, and male-headed families; union resistance to broader-based bargaining; and patriarchal, bureaucratic, hierarchical, and often fundamentally anti-democratic union structures and practices which marginalize women inside unions (1993: 7).

Interestingly, the strategic need for unions to organize a female dominated service sector to combat the steady erosion of their traditional

membership base has led to various organizational reforms designed to increase women's involvement. Internal equality initiatives have included affirmative action seats on executive bodies, together with the establishment of women's committees and conferences for policy and leadership development. According to White's study in 1993, these structural reforms were a significant step forward but representation of women was still low. A more recent analysis observed that the average proportion of women in union leadership positions was higher in Canada (one in four) than in the U.S. (one in eight), although this increased visibility of women tended to be at the local level and not within key roles with prospects for future advancement (Date-Bah 1997). According to Date-Bah, unions' commitment to women's equality issues is "closely related" (p. 210) to the number of women members and their representation in the leadership, although she cautioned against using mere numbers to "assess women's current importance in trade union life and activities" (p. 213). Indeed, Briskin (1999) has pointed out that: "there is no guarantee that a woman, by virtue of her sex, will have progressive political views on women's issues" (p. 76), and union women have highlighted the lack of impact on internal power following the establishment of affirmative action seats for women on governing bodies (Richmond, cited in Briskin 1999). Nevertheless, Briskin concluded from a study of representation, leadership, separate organizing and the redefinition of issues that: "the organizing of union women has had a dramatic impact on the structures, policies, practices, and climate of the union movement" (1999: 73).

Turning to workplace change beneficial to women, White (1993) found that Canadian unions had acted in areas of specific interest to women, although more in public than private sector unions. Jackson and Schellenberg (1999) found that clauses such as maternity leave, sexual harassment and family responsibilities had increased significantly between 1985 and 1998. Research also indicates that women benefit monetarily from being in a union. The average wage of unionized women was 31% higher than that of women in non-unionized jobs in 1995 (Jackson and Schellenberg 1999). This benefit applied particularly to women working in part-time or "non-standard" jobs (Canadian Labour Congress 1997). Indeed, national and international studies indicate that the gender wage gap is smaller in unionized than in non-unionized jobs (Folbre et al. 1992; White 1993; Jackson and Schellenberg 1999). Even so, Canadian and British research has highlighted the difficulty of translating gains derived from internal equality structures into successes at the bargaining table, with women still being in the minority in most union negotiating teams (Dickens and Colling 1990; Kumar 1993; White 1993).



### ***PAY EQUITY STUDIES***

Although Evans and Nelson (1989) and Blum (1991) focused on female administrators in their U.S. comparable worth studies, they recognized the importance of union support. Evans and Nelson pointed to the difficulty of mobilizing this support, since a perception of comparable worth as eroding already decreasing traditional male wages could generate defensive hostility. Acker (1989) argued that the unions involved in the Oregon implementation had contributed to the development of an organizational logic with a gendered substructure, comprised of practices which overall repelled any efforts to change the traditional wage hierarchy. Consequently, women's work remained invisible and any move towards wage redistribution was opposed. In particular, she identified high levels of intra- and inter-union as well as union-management conflict that marginalized women's interests.

Ellis-Grunfield (1987) and Ouimet (1988) were largely positive in their accounts of Canadian implementation and, implicitly, of the role of the unions involved. Ellis-Grunfield remarked: "while negotiations [in Manitoba health care] were lengthy, and sometimes complex, the parties endeavoured to find constructive solutions to any problems which arose" (p. 231). Ouimet commended the new single table bargaining of the thirteen civil service unions and the resulting federal government job evaluation study. Her account is in contrast to the negative interpretation by Warskett (1991), who had the benefit of the passage of time to note the Treasury Board's unilateral rejection of the job evaluation study, signalling the start of a long legal battle between the federal government and the Public Service Alliance of Canada (PSAC). Warskett's criticism was aimed at the Treasury Board, not the unions. Indeed, we now know that PSAC's determination resulted in a record legal settlement of almost \$4 billion in retroactive pay equity adjustments for their members (PSAC 2002).

However, Kainer's study of pay equity implementation in Ontario's private sector was critical of unions, who:

did not exploit the potential presented by pay equity to raise wages...What resulted instead, is that the pay equity plans negotiated reinforced the part-time workforce as a separate group. Pay equity maintained the division within the internal labour force between a large lower-paid, flexible part-time category, and a dwindling full-time, but higher-paid permanent workforce (Kainer 1998: 49).

Thus, a review of the literature shows varied levels of unions' effectiveness on behalf of women regarding their equality in general, and pay equity bargaining in particular. The following sections discuss the role of unions in the Ontario public service and Newfoundland health care pay



equity bargaining by exploring how far they were able to control the direction of negotiations to the benefit of women.

### ***PAY EQUITY BARGAINING IN THE ONTARIO CIVIL SERVICE***

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Under the Ontario Pay Equity Act, 1988, employers were required to develop pay equity plans comprising of the gender neutral job comparison system used; job evaluation results; identification of any exemptions; and a wage adjustment schedule. These plans were subject to deadlines depending on establishment size and sector. The provincial government and the Ontario Public Service Employees' Union (OPSEU) negotiated the Ontario Public Service pay equity plan. In terms of utilizing available resources, the union negotiators immediately recognized that the legislation gave them more bargaining power than in previous attempts to negotiate pay equity with a reluctant employer. In the interviews, they explained the importance of this shift in power in light of the prohibition of strikes in the public service which was in effect at that time.

OPSEU also took advantage of a political requirement for government to be seen as a model employer and this further increased their power, enabling them to control the directions of the negotiations. Government negotiators were under pressure to demonstrate to other large employers that pay equity could be bargained within the deadline, and in a collaborative manner. Union negotiators described a sense of government desperation to meet the deadline: "in the end, they were almost pleading with us to settle this," and this was echoed in the government negotiators' accounts. Government was willing to give a number of concessions, initially of high importance to them, in order to reach their target. For example, the chosen methodology required a job evaluation questionnaire. This took a very long time to negotiate, but both parties expressed pride in it during the interviews and saw it as a first in public sector labour relations. However, at one stage there was a significant delay because of strong disagreement over the design of the questionnaire, and a government negotiator recalled: "because of the time lag... we had to get a decision... We were really, really loathe to give up our multiple-choice ... So, for us it was heart wrenching, technically, to give up on them ... There was no way out." Their statistical expert resigned over this bargaining outcome, showing the cost of that particular concession to the government team, and the extent of the union's influence at this juncture. Knowing the PEHT ruling on information disclosure, OPSEU utilized their new right to information on non-union and management wages, so jealously guarded by management in the past, to enhance their power during pay equity and subsequent bargaining.

The Pay Equity Commission and Tribunal provided an important indirect and potential power resource, even if the union did not directly use it.

So far, we could argue that OPSEU's control of events was based on utilizing resources in a way that reflects fairly traditional labour skills, relevant to more-or-less any set of negotiations. And these techniques demonstrated a level of commitment to the pay equity process. However, to really understand OPSEU's role we have to look at how they were able to utilize resources deriving from their equality structures and policies, the gender analysis of the negotiators and women's networking inside and outside the union.

In 1987, as pay equity negotiations started, OPSEU included 30% women on its executive board with a 54% female membership. This gap in representation was broadly similar to other Canadian public sector unions (White 1993). However, OPSEU is on record as a ground breaking public sector union with regard to women's equality (Briskin and Yanz 1983). Women unionists mobilized support for the first women's committee and co-worker sexual harassment policy in Canada; at the time of this study, the union had progressive policies on internal and workplace equality, child-care, video display terminals protection, job sharing, abortion and human rights.

OPSEU also featured significant women's networking outside the union in its prominent membership of the Equal Pay Coalition, which successfully lobbied for and later monitored the pay equity legislation. The union devoted considerable resources to pay equity, establishing a Pay Equity Division. 80% of the public service bargaining team were women, and the key negotiator was a founder member of the Equal Pay Coalition with considerable expertise in pay equity. Her strength as a negotiator was enhanced by the impressive equality policies of OPSEU and the long-standing influence of an effective women's committee, some of whose members were also in the bargaining team, including the Equal Opportunities Coordinator. This set of negotiations demonstrates well the combined strength of a formal link between equality and negotiating structures together with women's networking, as a basis of control over the direction of events.

The negotiation of a job evaluation questionnaire was crucial in a process without job evaluation committees. There were long-drawn out technical arguments about the wording of questions, labelling and number of scale measurements. In reality, the negotiating team knew these arguments were about capturing women's work, and constituted a "sub-text," as noted by OPSEU's chief negotiator:

we fought over every word, every letter, every comma, every period, the order of them, the way in which they were stated... We wanted to get at nursing attributes or qualities in this particular question in as strong a way as we

could... when you get to the end of the day, it translates into points and money.

This expertise displayed by OPSEU's team in negotiating a gender-neutral job evaluation system was crucial in an area long guarded as the sole terrain of management. Another stage in the negotiations where OPSEU negotiators were able to control the direction of the process through their grasp of gender analysis and a complex pay equity methodology was when the negotiations hit an apparently insurmountable technical problem. The parties had been bargaining based on the use of a wage line to calculate adjustments and were suddenly informed by senior bureaucrats that they could only apply the job-to-job comparison as legislated, a weaker model of pay equity. This realization stalled the process as initially neither party could see their way out of the impasse. However, OPSEU were able to gain the government's agreement to a creative solution they had developed, which both parties referred to as "the percent female factor," and this enabled the negotiations to move forward to a final settlement above and beyond the statutory minimum.

During the final stages of calculating wage adjustments, the union negotiators also revealed a clear understanding of the ramifications of what was a potentially mystifying technical process, as this description by a government negotiator shows:

again the [OPSEU] technicians went into the back room and spun the numbers and produced a set of results, identified a male comparator that did in fact provide the administration group with quite a healthy pay-out. So, while there was an incredibly sophisticated, exhaustive technical system behind it all, when it actually came to the negotiations it was a hot spot, it was a pressure point.

This comment not only shows the union's technical expertise in calculating pay equity adjustments, but also indicates a tension between their commitment to gender neutrality and the political reality of rank and file expectations. Based on the case study material, it was important that the majority administration group receive a "healthy pay out." OPSEU's minority group—the nurses—subsequently challenged the union and employer at the PEHT, alleging that their work had been inadequately valued (Management Board Secretariat 1993). Although there was a strong dissenting decision, the PEHT dismissed the case, concluding that the Act did not provide for the appeals of unionized individuals, and that the parties had made a reasonable attempt to achieve gender neutrality in their job evaluation.

### ***PAY EQUITY BARGAINING IN NEWFOUNDLAND HEALTH CARE***

The 1988 Pay Equity Agreement (PEA) established a multi-party Pay Equity Steering Committee (PESC) to designate female and male dominated

job classes, select a gender neutral job evaluation system, appoint job evaluation committees (JECs), and calculate the wage adjustments. Participating in pay equity bargaining were the provincial government, the Newfoundland Hospital and Nursing Home Association (NHNHA), the Newfoundland Association of Public Employees (NAPE), CUPE, the Newfoundland and Labrador Nurses' Union (NLNU), and the Association of Allied Health Professionals (AAHP).

The Newfoundland unions used some conventional labour relations techniques to increase their control over the pay equity negotiations. Echoing OPSEU's comments, union representatives in Newfoundland identified the proactive policy itself (even though not legislated) as adding significantly to their power compared to their previous attempts to negotiate pay equity. For example, during the PEA negotiations, the unions' common front took full advantage of the unusual multi-party process to develop a powerful bargaining position when facing the government and employers. Reminiscent of Ontario, too, was the unions' description of a government "desperate for an agreement," and they capitalized on the then premier's political need to be seen as being in partnership with the public sector unions and as progressive on equality. Finally, during the job evaluation phase, hospital support union representatives enhanced their power by utilizing an effective internal communication network. Information became part of the power struggle, with management complaining that their union counterparts had access to more job description details than they did.

As in the Ontario case, however, it is important to understand how particular unions were able to control the direction of the negotiations by utilizing other important resources, identified in this article as deriving from their equality structures and policies, gender analysis and women's networking. In terms of the power dynamic during the PEA negotiations and in the PESC, the two key unions were NAPE and CUPE, who shared representation of the hospital support workers and negotiated in alliance.

NAPE had a female membership of 54% in 1990, and it doubled its percentage of women board members to 42% with the introduction of six affirmative action seats. Female representation on wage negotiating teams at the time was fairly good; the Hospital Support component with 74% female membership had 50% women on its bargaining committee and the Lab and X-Ray workers with 69% female membership had 60%. At the time of the study, NAPE had policies on universal daycare, job-sharing and sexual harassment. Translating equality policies to collective agreement language was aided by formal and informal links between NAPE's Women's Committee, a National Union of Public Government Employees (NUPGE) Women's Committee and a national level negotiators' committee. In general, women's networking reinforced structural linkages and included

a conduit to the key pay equity negotiators. To illustrate, one union activist stood out in her determination to make women's work visible in the job evaluation phase. Her ability to combine gender analysis with more traditional labour relations skills was developed through her experience as Chair of the Newfoundland and Labrador Federation of Labour Women's Committee, ten years as a President of her local, as a provincial executive board member, and as President of the St. John's and District Labour Council.

CUPE had a 52% female membership in 1992. While representation on the regional Executive Board was fairly low at 22%, their national level Executive Board was more representative at 50% women and both top elected positions—the President and the Vice President—were women. Although negotiating teams at a provincial level were made up of only 20% women, this figure excluded a long-time female chair of the main committee who had recently moved to a staff position. In 1993 CUPE was described as one of the most progressive national unions in Canada on equality (Kumar); at that time, there was a Department of Equal Opportunities together with a National Women's Task Force. The union had pioneered a pay equity policy in 1985, and they coordinated a country-wide pay equity strategy, assessing the best possible route in each province.

While bargaining pay equity, CUPE was characterized by strong links between equality and bargaining structures, reinforced by women's networking both inside and outside the union. The Chair of the Regional Women's Committee sat on the first JEC. She was also a member of CUPE's National Women's Task Force, the Newfoundland and Labrador Federation of Labour Women's Committee and the provincial government's Employment Equity Committee. Moreover, the National Director of the Department of Equal Opportunities sat on the PESC. She was able to use her expert knowledge of gender analysis and pay equity, based on the union's experience throughout the country and their substantial knowledge of job evaluation. Having been a CUPE health care coordinator for Newfoundland for a number of years previously, she was familiar with labour relations in the province and could tap into the provincial feminist network.

NLNU's and AAHP's emphasis at that time was on professional standards and they had no workplace equality policies similar to those of NAPE and CUPE. As we may expect in predominantly female unions, they had not developed any internal equality structures. However, the NLNU were committed to enhancing the value of nurses' work; in 1990 they had demanded an increase of 32% as a "special case" and had been awarded 25%. Expertise in gender analysis was not a strength of these unions and there was no evidence of women's networking, but their leaderships' commitment to pay equity added to labour's collective power when negotiating the PEA and while working on the PESC.

In the early stages of pay equity bargaining, the foundation of the unions' power base was the NAPE and CUPE bargaining alliance, which in turn incorporated strengths derived from the combined effect of the factors outlined above. Specifically, the unions' ability to control the negotiations on the basis of their expertise resulted in a relatively progressive model of pay equity, which calculated wage adjustments based on a male wage line. This represented the interests of their women members more effectively than the male-female wage line initially proposed by the government. The PEA also included an unusual provision for a further stage of job evaluation in the event of no comparable male dominated jobs being found in the health care sector for lab and X ray workers, nurses and other professionals. It also required closure of the identified wage gap by the fifth year and retroactivity of adjustments to the date of the PEA, the latter unique in pay equity policy across the country.

Of the resources used to enhance union power, women's networking inside and outside the union was particularly important during the PAE negotiations and during the initial operation of the PESC. At this juncture, both CUPE and NAPE negotiators' expertise in gender analysis and pay equity methodology was overlaid with a commitment to a process of participation and consensus. This resonated with a similar expertise and commitment on the part of two female negotiators representing the government and the employers and, interestingly, with male negotiators committed to a cooperative bargaining process. What evolved was essentially a union-management alliance, as highlighted by the CUPE National Director of Equal Opportunities:

So we agreed to work towards meeting both the unions' and the government and management goals. We did that in the washroom and that, in fact, was the settlement. And that is the first time that I've seen it done where women as feminists and committed to pay equity crossed over and united, and it is something we talk about now and laugh about. But it was very important at that time.

Referring to the initial stages of the PESC, composed of mainly the same group of negotiators, she remarked: "There were constant reminders from people on all sides of the table that we were there to work in a collective fashion. So, we saw that grow and... we worked very well together, we made all the decisions jointly. If there were problems then we worked them out together." This collaborative process held true until the government legislatively cancelled retroactive pay equity adjustments at which point the union-management alliance was undermined. The second JEC was established at this low point. However, even before this dilution of political commitment, there had been problems with the functioning of the first JEC, which had already put working relationships in the PESC under considerable strain.

Based on interviews with all members of the PESC and the two JECs, the job evaluation process contrasted dramatically with the PESC. As in the PESC, representation on the JECs was multi-party and 50% of members had to be women, but both committees revealed a high level of resistance to the recognition of women's work by representatives of government, employers and unions. Union-management conflict was compounded by inter-union conflict, leading to a marginalization of women's interests. Despite this, one hospital support union representative on the first JEC was sufficiently empowered by the NAPE-CUPE bargaining alliance to enable the capturing of some women's previously invisible work. She recollected the difficulties she experienced:

And they call a nine, which means that the team must then go, but the initial call would go the switchboard operator, and the switchboard operator has to react, and react calmly and swiftly and make sure the information is relayed. You can't say the nine is on 3A when it is on 3D or somebody dies. But there is no way that these professionals would credit any amount of stress. That was not stress; that was part of your job.

Her account also revealed considerable union rivalry:

and they kept calling themselves professionals and we were non-professionals... this type of demeaning attitude towards women's jobs... and they were constantly belittling the jobs that were within health care. There is no way that you could have any amount of authority or decision-making because you were simply not professional.

In the end, only the hospital support jobs were agreed upon in the first JEC, and a second JEC was established to more effectively evaluate the NLNU, AAHP and NAPE's lab and X-ray jobs through comparison with public service jobs. On this second committee, the inter-union conflict escalated to a level described by the NLNU representative as:

union people fighting against union people. Everybody had their own agenda and their own preconceived notion of where certain groups should be and how certain jobs should stack up against other jobs. It was almost as if every point that they gave away or let go was taking money out of their own pocket. And they fought tooth and nail not to let it go.

Not surprisingly, many jobs examined by the second JEC were transferred to the PESC for eventual decision, and a question mark was over those that were settled. The disadvantage for the nurses' union and their members was highlighted by the dramatic contrast with Ontario pay equity negotiations, where the debate and litigation over gender neutrality centred upon nurses' work (see Fudge 1991). AAHP were not satisfied that their members' jobs were fairly evaluated either, and I think it is reasonable to assume that this was the case, given the dynamics of the JECs.



Considering first a conventional labour relations explanation of the contrast between the unions' effectiveness in the PESC and their apparent failure in the JECs, the government's cancellation of retroactivity and a hostile public sector labour relations climate dramatically undermined the evaluation phase. However, although this would be applicable to the second JEC, the first ran concurrently with the early, successful stages of the PESC, before the government's withdrawal of commitment. An important part of the explanation lies in the shift from knowledgeable and committed negotiators at the leadership level to front-line personnel on the JECs; in general, this hindered impartial evaluation because of a resilient workplace adherence to gender-biased wage and status hierarchies. There was no critical mass of negotiators skilled in gender analysis who had a clear understanding of the purpose of pay equity, and there was no space for women's networking or a union-management alliance, as had occurred in the PESC. This lack was accentuated in the second JEC because hospital union negotiating moved away from gender analysis and capturing women's work to a focus on rigid wage parity with the nurses.

### ***CONCLUSION***

Overall, the unions in the Ontario and Newfoundland case studies were shown as representing women's interests during the pay equity bargaining process, although this varied among unions and within unions according to different stages of the process and different negotiators. In terms of Giddens' concept of power used to analyze the research material, in the Ontario and Newfoundland negotiations the power dynamic depended in large part on the ability of unions to recognize and effectively use the resources available to them, and in this way to control the direction of negotiations to the advantage of women. The unions which were the most effective in enhancing their power to represent women's interests used not only their conventional bargaining techniques but also utilized the key tools of gender analysis and expertise in pay equity methodology, developed primarily through their negotiators' formal links with internal equality structures and knowledge of equality policies, combined with women's networking inside and outside the labour movement. Given the complexity of the pay equity methodology and the resilience of hierarchy embedded in the collective bargaining process, negotiators who could bring these resources to the table and maintain commitment to the aim of tackling women's discriminatory wages were crucial.

This research differs from a major theme in previous pay equity studies (for example, Acker 1989; Kainer 1998), where unions were seen to undermine the process, revealing little evidence of gender analysis or

expertise in the methodology. It is not surprising, therefore, that Acker focused on the impact of gender as a barrier, as bias embedded in the process. However, even though the case studies here show that conflicting interests within unions can work against pay equity, they also illustrate the more positive "action" face of gender. Kainer explained the unions' lack of representation of women in terms of business unions versus social unions; this study indicates that the effectiveness of unions in equality bargaining is perhaps more complicated, although further research may well reveal a pattern linking social unions with the resources identified as important in this article.

On a practical level, this research underscores the importance of unions moving beyond a focus on female representation to not only the development of internal equality structures and policies but also the development of strong links between those equality reforms and equality negotiators. Placing women on pay equity negotiating teams is a first step but this has to be supplemented with the development of expertise in both gender analysis and pay equity methodology for all negotiators, male and female, regardless of the stage at which they are involved. In particular, it is clear the job evaluation phase is a most challenging task for union representatives, especially when part of a multi-party committee.

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## **RÉSUMÉ**

### **Les syndicats et la négociation de l'équité salariale au Canada**

Au cours des années 1980, un certain nombre de gouvernements provinciaux ont introduit des politiques pro-actives d'équité salariale afin de concrétiser d'une manière plus efficace le principe d'un salaire égal pour un travail de valeur comparable. On a fait adopter des lois couvrant le secteur public au Manitoba, en Ontario, à l'Île-du-Prince-Édouard, en Nouvelle-Écosse et au Nouveau-Brunswick, mais la mise en place s'est également effectuée par la négociation collective initiée par le gouvernement, par exemple, à Terre-Neuve. La province de l'Ontario a intégré le secteur privé, comme l'a fait aussi le Québec dans sa loi de 1996.

Toutes ces initiatives ont créé chez les employeurs l'obligation de négocier l'application de l'équité salariale avec des négociateurs accrédités et elles ont donné lieu à l'établissement de structures de négociation distinctes. Même si ces innovations ont obligé les employeurs à agir de façon pro-active, il devenait évident que les syndicats joueraient un rôle central, que la mise en œuvre de l'équité salariale soit voulue par un mandat légal ou amenée par un mécanisme administratif.

Le principe qui sous-tend l'équité salariale est à l'effet que les salaires des femmes ont historiquement été sous-évalués, qu'ils doivent être rectifiés par la comparaison d'emplois fortement occupés par des hommes avec des emplois fortement occupés par des femmes et que l'ajustement des taux de salaires se fasse de manière à ce que des emplois de valeur comparable reçoivent une rémunération de valeur égale. Mis à part certaines variations d'ordre technique, les juridictions canadiennes utilisent une méthodologie largement similaire : l'identification des emplois à dominance masculine et ceux à dominance féminine ; le choix ou le design d'un outil de comparaison dont la neutralité est assurée quant au genre ; l'évaluation des emplois basée sur l'habileté, l'effort, les responsabilités et les conditions physiques de travail ; suivent le calcul et la planification de l'implantation

des corrections de salaires. Cette approche a débouché sur une méthodologie d'évaluation complexe des emplois, souvent fortement quantitative, alors qu'historiquement c'était une fonction managériale, basée sur une norme masculine.

De plus, les écarts traditionnels de salaires apparaissent naturels ou logiques aux participants à la procédure d'évaluation des emplois, alors qu'ils sont fondés sur des notions de travail et d'habileté biaisées en faveur d'un sexe. C'est pourquoi il devient important que les syndicats se sentent responsables et impliqués à chacune des étapes du processus de négociation collective de l'équité salariale. Cependant, les syndicats au Canada, en Angleterre et aux États-Unis ont été la cible de critiques pour l'exclusion historique des femmes, un vestige lié à une culture contemporaine à tendance masculine, accompagnée d'une relativement faible représentation des femmes dans le gouvernement des organisations syndicales. Même s'il en est ainsi, il faut reconnaître qu'une étude de la représentation, du leadership, de l'organisation syndicale distincte et d'une reconceptualisation des enjeux a signalé des améliorations dans ces domaines. De plus, des études à la fois d'envergure nationale et internationale ont révélé que l'écart de salaire dû au sexe est plus faible pour des emplois syndiqués que pour des emplois non syndiqués. Néanmoins, les travaux de recherche au Canada et en Grande-Bretagne ont mis en évidence la difficulté de traduire des gains tirés de structures d'égalité interne dans des succès à la table des négociations, alors que les femmes se retrouvent encore en minorité dans la plupart des équipes de négociation.

Des études antérieures sur l'équité salariale au Canada ont fait état de résultats positifs de l'implication des syndicats au Manitoba et dans la fonction publique fédérale. Cependant, elles donnent aussi une vision négative de leur rôle en Ontario. Les travaux américains sur la mise en œuvre du concept de valeur comparable présentent la participation des syndicats sous un jour peu reluisant, la tendance étant au renforcement des hiérarchies de salaires et de statuts plutôt qu'une correction aux rémunérations discriminatoires. Étant donné les comptes-rendus apparemment mitigés sur l'égalité des femmes, l'objectif de cet essai est de vérifier dans quelle mesure les syndicats au Canada représentent les intérêts des femmes dans le processus de négociation sur l'équité salariale. Faisant appel à une méthodologie basée sur l'étude de cas et retenant comme cadre de référence la théorie du pouvoir chez Giddens, cette recherche a tenté d'analyser dans quelle mesure les syndicats ont pu contrôler le processus de négociation sur l'équité à l'avantage des femmes ; cela est d'autant plus important vu la tendance chez les dirigeants à contrôler et à endiguer le processus de négociation sur l'équité salariale.

En référant aux négociations qui ont fait l'objet d'études dans la fonction publique de l'Ontario et dans le secteur de la santé à Terre-Neuve,

on constate que les syndicats ont effectivement fait valoir les intérêts des femmes dans le processus de négociation sur l'équité salariale, quoique cet effort variait au sein des syndicats selon le stade d'implantation et selon les négociateurs.

En gardant à l'esprit le concept de pouvoir chez Giddens, on constate que la dynamique du pouvoir inhérent à la négociation dépendait largement de l'habileté des syndicats à identifier et à utiliser les ressources à leur disposition de façon à influencer la direction des négociations à l'avantage des femmes. Les syndicats qui agissaient dans ce sens avaient recours non seulement aux techniques conventionnelles de négociation mais encore utilisaient les outils clé de l'analyse fondée sur le sexe et leur expertise au plan de la méthodologie propre à l'équité salariale. Ces éléments se conjuguèrent principalement avec les liens formels des négociateurs avec les structures internes d'égalité et la connaissance que ces derniers possédaient des politiques d'égalité, ceci en association avec la mise en réseau des femmes aussi bien à l'intérieur qu'à l'extérieur du mouvement ouvrier.

Comparées à la trame négative évidente de la recherche antérieure sur le rôle des syndicats dans la mise en application de l'équité salariale, ces études de cas mettent en évidence la face positive de l'action du genre dans la négociation sur l'équité, même si elles démontrent également que des intérêts conflictuels à l'intérieur des syndicats ou entre eux peuvent jouer contre l'équité salariale. Au plan pratique, la recherche sous-estime l'importance de l'action syndicale au-delà d'une préoccupation centrale à l'effet d'accroître la représentation des femmes au sein des structures d'égalité et des politiques, de façon à s'assurer de liens étroits entre ces réformes au plan de l'égalité et les négociateurs. En faisant une place aux femmes dans les équipes de négociation, ce serait là un premier pas, mais qui devrait être complété par le développement d'une expertise à la fois dans l'analyse fondée sur le genre et la méthodologie de l'équité salariale chez tous les négociateurs, hommes et femmes, sans égard à l'étape du processus dans lequel ils sont impliqués.