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COMPARABLE WORTH REJECTED BY THE COURTS

When the Ninth Circuit Court of Appeals rejected the concept called Comparable Worth, did you get the impression that this was a loss for women who had been discriminated against? If so, you missed the point; the court's opinion said that "none of the individually named plaintiffs in the action ever testified regarding specific incidents of discrimination."

Neither the facts nor the law was on the side of Comparable Worth. As the court's opinion pointed out, the legislative history of the Equal Pay Act shows that Congress specifically rejected proposals that would have established an equal-pay standard based on "comparable worth," and instead chose "equal work."

The American Federation of State, County and Municipal Workers (AFSCME), which brought the lawsuit, had tried to get the courts to read Comparable Worth into the law. An activist District court judge did hold that Washington State had discriminated on the basis of sex by not paying equal wages for entirely different jobs which the Willis evaluation alleged were of "comparable worth."

The appeals court examined the two legal theories which were used to try to prove discrimination: "disparate impact" (the "effects" rule) and "disparate treatment" (the "intent" rule). AFSCME lost both arguments.

The court ruled that the "effects" rules cannot be used against an employer's decision to base compensation on the competitive market. "We find nothing in the language of Title VII or its legislative history," said the court, "to indicate Congress intended to abrogate fundamental economic principles such as the laws of supply and demand or to prevent employers from competing in the labor market."

Continuing, the court said, "Neither law nor logic deems the free market system a suspect enterprise. Economic reality is that the value of a particular job to an employer is but one factor influencing the rate of compensation for that job." Other factors include the availability of workers willing to do the job and the effectiveness of

collective bargaining.

AFSCME tried to prove discriminatory intent by citing the Willis evaluation, but failed. Pointing out the subjectivity and unreliability of job evaluations, the court said, "The results of comparable worth studies will vary depending on the number and types of factors measured and the maximum number of points allotted to each factor."

Actually, the Willis point system itself deliberately and massively discriminated against blue-collar workers. The evaluator would grant points to each job classification based on his personal perception of the "worth" of four qualities. A maximum number of points was allotted to each category: 280 for knowledge and skills, 140 for mental demands, 160 for accountability, and 20 for working conditions.

Anyone who has had grade school arithmetic should be able to figure out that all the adverse working conditions and risks to health and limb endured by blue-collar workers would at most give only a little over three percent of the total points. No wonder the court called attention to "the possibility that another study will yield different results"!

The court held that the employer's reliance on a free market system, in which employees in male-dominated jobs are compensated at a higher rate than employees in dissimilar female-dominated jobs, is <u>not</u> in and of itself a violation of Title VII, notwithstanding that a "study" alleged that the positions had "comparable" worth. The employer should be able to take market conditions into account, added the court, and Title VII does not obligate the employer "to eliminate an economic inequality which it did not create."

This landmark Ninth Circuit decision will enable Congressmen and state legislators to treat the radical notion of Comparable Worth with the scorn it deserves. Rep. Richard Armey (R-TX) pronounced the advocates of the Oakar Comparable Worth bill pending in Congress as "like Captain Ahab chasing Moby Dick, except that they don't even have one leg to stand on now."

America is a land of equal opportunity; it is not a land of equal results. Those who want the latter can look to the Soviet Union where all except the top bosses receive comparably low wages.