



GMB

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Maureen Reid, Derriford Hospital housekeeper. GMB won new pay deal for 24 members at Derriford Hospital, Plymouth. October 2008

EQUAL PAY

CEC SPECIAL REPORT 2009

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Introduction

At GMB Congress in 2005, GMB launched the most aggressive equal pay campaign ever seen. GMB now has 30,000 individual equal pay claims lodged with tribunals. We have negotiated equal pay for literally hundreds and thousands of women and recovered over 1 billion pounds in compensation for them. This report highlights the GMB campaign for equal pay.

Why Equal Pay is Important - The Gender Pay Gap

Full-time women workers earn on average around 19% less than men. It is an even bigger difference in part-time work, around 40%. These average differences between the sexes, known as the gender pay gap, are largely caused by society attaching lower values to certain roles mainly carried out by women (eg caring, catering, cleaning) and by more men being in managerial and senior professional positions. Part of the gender pay gap is caused by discrimination in pay - that is unlawful and is what equal pay law seeks to address.

GMB – The Union for Equal Pay

The GMB Campaign for equal pay launched at Congress 2005 builds on a long tradition and hard work of GMB activists in organizing around the issue of equal pay. The GMB strategy is to register claims, to negotiate, and to back that up with litigation when necessary. The success of the Campaign has put

GMB back at the forefront of the struggle for equal pay. The GMB campaign puts equal pay at the top of the bargaining agenda in the workplace.

More and more women want to join GMB, and in the last four years over 177,000 women have joined GMB. Women now make up almost half of all GMB members today, many of them part time and low paid. GMB continues the commitment to help working women fight for equal pay. Since 2005, GMB has visited and campaigned in thousands of workplaces including schools, local government, care homes, and in private sector companies. More than 76,000 part-time working women have joined GMB for the first time, including 45,000 in local government. Working women joining GMB to fight for equal pay has made a major contribution to the 9% growth in our total union membership that we have seen since 2005.

Julie Hayward – Cooking Up a Storm

The Campaign builds on historic trade union struggles for equal pay. GMB won the first ever equal pay for work of equal value case when Julie Hayward achieved her famous victory against Cammel Laird. Julie was a cook working in the shipyards who proved that her work was as demanding as the work of a male painter.

It was a long legal process but her victory demonstrates the very real benefits for women and the role of trade unions in achieving those victories. Julie's case sits alongside other historic struggles supported by trade unions

including the Ford Sewing Machinists, the Hull Fish Packers, the Yorkshire Dinner Ladies, the NHS Speech and Language Therapists, and the Belfast Cleaners to name a few. The TUC has produced a DVD portraying these struggles with interviews with some of the women concerned, including Julie Hayward.

The GMB Campaign – Delivering equal pay in the workplace

The GMB equal pay campaign is about delivering equality in the workplace. This means negotiating collective pay arrangements that are as free from bias and discrimination as we are able to achieve - and litigating to make up any shortfalls where appropriate. There is no other means of achieving equal pay in collective settings. Courts can hear complaints of unequal pay and can set compensation but they cannot design whole pay systems for large scale employers.

The GMB campaign in the Public Sector

In the NHS and in local government there has been huge progress on equal pay since the late 90's. Thanks to trade union pressure, Single Status in local government and Agenda for Change in the NHS have led to more equal pay structures being introduced across over 2 million workers. The GMB campaign builds on Single Status and Agenda for Change to bring real improvements in the pay of low paid workers.

With the introduction of the 1997 National Joint Council Single Status Agreement councils committed to end the historic pay discrimination in local government by reviewing and renegotiating their pay and grading structures to make them equal pay proofed. But lack of progress due to underfunding meant that in 2004 a further national agreement was necessary to try to secure the implementation of all pay and grading reviews by April 2007. While this accelerated progress the problems of local government finance continued to be a hindrance. As a result 40% of councils have still to complete single status, or, more positively, single status has been completed for 1 million council workers. GMB will continue to press for full implementation.

In the NHS, Agenda for Change is the most significant overhaul of pay in the NHS since the creation of the health service in 1948. Introduced in 2004 with significant central government funding Agenda for Change has been implemented in most NHS Trusts. However, Trade Unions are challenging the NHS over equal pay compensation because Agenda for Change did not include any provision for backpay and there are around 14,000 outstanding claims from all unions at employment tribunals. Nonetheless, Agenda for Change is regarded as a successful example of implementing equal pay in practice. After hearing evidence from employers, the government, and unions, an employment tribunal has recently ruled that Agenda for Change does what it set out to do – deliver equal pay!

The GMB Campaign in the Private Sector

There are few examples of major equal pay schemes in the private sector and these employers often do not recognise or acknowledge equal pay as an issue in their businesses. It is also the case that most private sector employers organise their operations in such a way as to reduce the prospects for making equal pay comparisons by segregating their workforces with different pay structures. GMB has been seeking to break this mould by looking at the potential for equal value claims in a number of companies.

The GMB Campaign: Challenging the Employers

GMB believes that equality proofed pay structures can only be achieved through collective negotiation which needs to be backed up by litigation - and where negotiation fails that litigation is carried out. Practically this means GMB Officers establishing whether there are possible equal pay claims and encouraging members to register them while at the same time engaging with employers to renegotiate job and pay structures. By lodging equal pay claims our members' position is both protected and strengthened. These claims can proceed where negotiations stall or do not deliver.

Carrying out this strategy in the real world is far from simple. The first issue is that only rarely is there a clear and certain prospect for equal pay claims. In any large, complex employer there will be many pay anomalies but whether these are due to sex discrimination requires considerable expert analysis.

That is why public sector employers are required to carry out equal pay assessments to test their pay structures for bias and discrimination - which GMB calls on all employers to do.

The second issue is that once pay inequality is recognised there comes the question of what to do about it. For an individual it may just be a matter of paying them more. If it is for a large group this is likely to be evidence of a systematic problem requiring an overhaul of the entire job and pay structure. There is also likely to be a considerable cost implication.

If any of those issues stand in the way of progress then we proceed with equal pay claims through tribunals. The proof of that is the 30,000 live equal pay cases that GMB is actively pursuing for women mainly in local government. These are all generated by our local Officers and activists with the approval of the individual members and taken up by GMB solicitors throughout England, Wales and Scotland. These cases can be long and difficult with many test issues including cases that have gone to the appeal courts and the House of Lords.

As an example, the GMB case of *Joss v Cumbria County Council* involves several thousand claimants and the case has already been running for 5 years. It has spawned a series of satellite cases as Cumbria has fought every issue and appealed every finding. Legal costs have been huge and as yet there is no sign of any money for the claimants.

At the same time there are other cases which are testing important principles of equal pay law, sponsored by GMB and other public sector trade unions. We are absolutely at the forefront of this cutting edge litigation, leading the fight for equal pay.

The GMB Campaign: Challenging the No-Win No-Fee Lawyers

At the same time as campaigning for equal pay, GMB has faced attacks from no-win no-fee lawyers. In 2003 English law changed to increase the amount of compensation equal pay claimants were entitled to for past pay inequality. It increased to a maximum of six years back pay (five in Scotland) from the previous two years. This amount of potential cash now made equal pay an attractive proposition for law firms to tout for the work on a non-win-no-fee basis; before that it was just left to unions.

A number of such no-win-no-fee lawyers operate in the equal pay field. One such no win no fee lawyer is Stefan Cross. A former trade union lawyer who did GMB work in the North East, Cross set up in 2002 with a sales force of ex-union officers to take equal pay cases for union members with him at a 30% fee rather than for free with their unions. He was prepared to act for them in claims against their unions. Cross' actions are an attack on trade unions and seek to blame unions for the employer's failure to pay equal pay.

Allen v GMB

The case of *Allen v GMB* was run by Stefan Cross on behalf of 51 women employed by Middlesbrough Council. It was regarding their equal pay negotiations in 2004. A tribunal in Newcastle found that GMB had indirectly discriminated against the women, a finding overturned by the Employment Appeal Tribunal and subsequently reinstated by the Court of Appeal in 2008. The House of Lords refused permission to appeal. The case has now been referred back to the original tribunal to determine remedies i.e. the compensation that the claimants will recover.

Other Cases

There are thousands of other *Allen*-type cases against unions pending from the same no-win no-fee lawyer mainly in the North East and Scotland, which GMB is challenging.

In 2009 GMB successfully challenged hundreds of cases brought against the union by Stefan Cross in Yorkshire across three local authorities, Leeds, Rotherham, and Sheffield. When GMB pressed Cross to particularise the general alleged complaints against the union in these three authorities the claims were withdrawn.

In 2007 Cross threatened to sue GMB in the civil courts on behalf of 3000 members across the UK alleging that we were negligent in not notifying them about their equal pay rights. GMB challenged these cases and at the time of

writing this report the threatened 3000 has been reduced to 8 (which are still contested).

Quinn v Cross

As part of the no-win-no-fee contract Stefan Cross tries to impose penalty clauses on his clients if they change their mind. One such case was a Ms Quinn in [Glasgow] who did not like the service she got from Stefan Cross so she went back to her union and refused to pay his penalty clauses. In December 2008 a Scottish court not only upheld her right to refuse to pay but in so doing declared Cross' contract unenforceable. This means that those Scottish clients of his who have paid him a share of their equal pay compensation may be able to recover it - and GMB has written to members in Scotland offering to do just that.

The GMB Campaign: The Future

There is no end in sight for the campaign for equal pay or the litigation that results from it. For GMB it means that our resolve to win equal pay must not weaken - whether that be through negotiation or running 30,000 equal pay claims or defending ourselves against no-win-no-fee lawyers.

This is our action plan for the future:

- We will build on our successful campaign which has already recovered over a billion pounds in compensation for GMB members.

- Campaign for equal pay through collective negotiation and litigation where necessary to protect members and keep GMB at the cutting edge of equal pay law
- Press for full implementation of Single Status in local authorities with equal pay and compensation
- Press for equal pay compensation in the NHS
- Press private sector employers to address equal pay
- Demand proper funding for equal pay. If society is serious about the equal pay gap then the cost of closing it has to be provided for. It is simply not feasible for equal pay to be achieved at nil cost as it is expected to be in local government.
- Demand that collectivism is brought back into the process of securing equal pay. The rights of individuals to equal pay and not to be discriminated against are being interpreted by Courts as anti-collective such that negotiating equal pay has become a lottery. If the Courts will not apply common sense then the law needs changing.
- Demand access to justice. Where members and their unions have to resort to litigation it should not be open to employers to thwart the

- Challenge the attacks brought against the union by no-win no-fee lawyers. We will support our members who seek to obtain justice against the no-win no-fee lawyers.

Conclusion

The success of the GMB equal pay campaign is down to the hard work of GMB officers and activists who organize around the issue. It is not an easy struggle and has difficult obstacles to overcome. However, our task as a progressive trade union is to represent our member's collective interests and to secure justice and equality for our members.



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