

## Sex Discrimination on Campus: Michigan Wrestles with Equal Pay

An uproar at the University of Michigan over the salary of a 26-year-old female research worker may set major precedents for women's rights at American universities.

Charges by Cheryl Clark, a research associate at the university's Highway Safety Research Institute (HSRI), that her salary reflects discrimination based on sex also marks a turning point in the women's movement at universities. Until recently, the movement has focused on broad matters of university policy. Now, however, the charges concern individuals, and the number of charges is starting to swell to a flood.

The case appears to have broad implications partly because the Department of Health, Education, and Welfare (HEW) has chosen Michigan as a testing ground for programs ending discrimination against women.

By pressing the case, Clark and her lawyer, Harry T. Edwards, a black professor at the Michigan Law School, opened the local Pandora's box of academic salary mysteries. The result has proved to be a test of two issues: first, what procedures are fair in a university for handling complaints of sex discrimination, and, second, how to define the standard of equal pay for equal work in a university setting.

The latter issue—the equal pay standard—is currently unresolved. But university policy has changed on the former issue, the question of procedures. As a result of the Clark case, Michigan President Robben W. Fleming has called for a new arbitration system which will “accord fully with the requirements of due process.”

The dispute has been particularly embarrassing to the university because, since last fall, Michigan has been negotiating an “affirmative action plan” with HEW for ending sex discrimination. The two issues are connected. John Hodgdon, civil rights director for six midwestern states, who is representing HEW in the talks, told *Science* that, “If Clark has been discriminated against, then the university is out of compliance.”

Michigan's troubles with women are part of a larger picture. More than 250 colleges and universities, or an estimated 12 percent of the national total, are now on HEW's roster for similar investigation and possible negotiation (*Science*, 20 November 1970). Since January 1970, Women's Equity Action League (WEAL) has been filing charges against individual colleges for violation of the Executive Order 11246 which, as amended, prohibits federal contractors from discriminating on the basis of sex at the risk of loss of federal funds.

To handle the grievances, HEW is raising the staff of its contract compliance investigators from 33 to 92, spread out over nine regional offices. In the Chicago office, Hodgdon says he has “a huge number” of complaints and that “it's a bottomless pit situation.”

Clark herself is a soft-spoken master's candidate in sociology, whom one university official describes as “a good test case—she's the stereotype of the sweet little research assistant.” She receives an annual salary, in the alcohol safety program of HSRI, of \$9100. Last winter she learned, accidentally, that a male research associate was being paid \$12,500, and that the amount for her own salary in the project's budget is \$13,200, or \$4100 more than she receives.

By acting on this information she opened a can of worms—one which will probably appear again and again on other campuses as more and more women protest discrimination.

To summarize: Clark approached her department head and asked for equal pay. In February, her department head said no. Following established procedures, she brought her request before the university's grievance committee, which is made up of three administrators. On 28 May the grievance committee also said no, and the case normally would have rested there. But the committee's rejection stirred a loud outcry—from the student paper *The Michigan Daily*, the Women's Commission, and women employees—and,

2 weeks later, on 18 June, President Fleming issued a statement calling for new complaint procedures and promising Clark another chance under a new, fairer system. The procedures are now being negotiated by the Women's Commission and the personnel office of the university.

The substance of the case was the equal pay principle. Clark contended that she was doing the same job as her male associate, Joel Epstein, and therefore was entitled to the same salary.

The equal pay standard has long been recognized in industrial settings. There, its application involves many technical considerations, and it often can only be determined by experienced labor arbitrators. In the academic environment, a similar background of precedent and expertise is lacking. Add to this the fact that academic salary determinations are often made in a vague, mystical, and secretive fashion, and you have the reason why Clark's equal pay request proved such a problem.

### Salary Differential

In a 52-page brief to the committee, Edwards argued that the \$3400 difference between the salaries of Clark and Epstein was a violation of Fleming's 8 December 1970 statement to HEW committing the University of Michigan to “achieve salary equity between male and female employees having the same qualifications, responsibilities, and performance in the same job classification.”

Edwards argued that despite the fact that Epstein holds a master's degree and that Clark only is working toward one, Clark's job responsibilities are greater than Epstein's: she reports directly to the research project director, Lyle Filkins, whereas Epstein reports to someone else, who in turn reports to Filkins.

Edwards said that Clark's 3 years of experience in the alcohol section was more relevant to her job than Epstein's 8 years in the armed services, computer programming, and urban studies. “Miss Clark also oversees and supervises three employees working on the HSRI Washtenaw County Program; Mr. Epstein, on the other hand, supervises no one.”

The three-page decision of the committee, rejecting Clark's suit, did not deny that she held as much, if not

more, responsibility than Epstein. But it argued that Clark was not the victim of discrimination because her promotions and raises had equaled or bettered those of other researchers who had started at the same time as she. The decision termed the equal pay argument "simplistic" and found her salary in keeping with the criteria of educational background, amount and type of experience since completion of degree, "breadth and depth of capabilities . . . both general and specific," and "market value."

In a dissenting opinion, Jean Campbell, the Women's Commission representative on the committee, came to the opposite conclusion. She admitted that, "in educational institutions generally, the investment in higher education is usually recognized" in monetary terms. But she criticized the committee's use of "market value" as a pay standard: "Market value is a reality of the economic system, not a qualification for employment." The committee's criteria of "breadth and depth," she said, were "subjective" judgments and could justify "any" salary difference. She said "Mr. Epstein was thought to have greater flexibility than

he has displayed and is effectively overpaid." Finally, digging out other evidence showing that women research associates in HSRI were generally paid less than men research associates, she suggested that Clark's salary be raised to \$11,000.

President Fleming, in his statement calling for a review of the committee's decision, saw further complications: "What may be involved in some of these cases are long-standing practices of any university. . . .

"It is well known that, if an assistant professor and a full professor are carrying substantially the same load and doing substantially the same kind of work, the full professor will be paid more. It does not matter that the assistant professor may in fact perform better on what the industrial world would call 'the same job.'" He also pointed out that similar salary differences in the university in the same job category exist among men and among women, as well as between men and women.

The other principal angle in the Clark case was the issue of due process in hearings. Lacking previous experience with such a complaint, the university

simply breathed life into an old system of management review which, eventually, came under attack from all sides as inadequate. Although, to date, university public relations personnel will not concede that the procedures used were unfair, President Fleming's call for reform indicates that the university has realized that something was wrong.

The review committee consisted of James Thiry, from the personnel office, Jay Katz, from Clark's academic department, and Campbell of the Women's Commission. In March they "heard" first one side, then the other, in a closed hearing. They then went about making their own investigations, and 2 months later issued a two-page decision.

Clark's lawyer, Edwards, argued that the procedure denied Clark her rights of due process, and that, even in the nonjudicial setting of the university, due process should be observed. He said that due process would have given him, and Clark, a chance to cross-examine witnesses and to know in advance the evidence that the university lawyer would present.

After the hearing, according to Edwards, the Thiry committee referred the

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## Congress Considers Equal Pay Rights for Academic Women

At present, women in teaching and research jobs are not protected by the 1938 Fair Labor Standards Act or by the 1963 Equal Pay Act, which is a part of it (clerical and other hourly employment are covered). The only federal prohibition which applies to them are Executive Order 11246 and its amendment, Executive Order 11375, issued by President Johnson in pursuance of the 1964 Civil Rights Act. Since these prohibit federal contracts from discriminating, the orders give the government a lever—contract cancellation—to make an institution comply. But in congressional testimony last month Bernice Sandler of WEAL called the Executive Orders "at best an administrative remedy . . . without the force of law."

According to the Senate Subcommittee on Labor and Public Welfare, there are still 17 million employees nationally not covered by the patchwork of amendments and special provisions of the Fair Labor Standards Act—including such diverse groups as women

research associates, seafood processors, and shade-grown-tobacco workers. Hence a number of congressional attempts to plug up the loopholes. The most comprehensive is the Fair Labor Standards Act Amendment of 1971 proposed by Senator Harrison A. Williams (D-N.J.). This would bring 13 million of the excluded 17 million employees under the act's umbrella. While many parts of the amendment are considered controversial, the part dealing with university women receiving equal pay is estimated to have a "good" chance of passage before the August recess. A backup measure, focusing on university women, has been proposed by Senator Philip A. Hart (D-Mich.), who earlier wrote HEW Secretary Elliot Richardson about the Clark case. The Hart Amendment could conceivably get through the Senate should the Williams proposal fail. A corresponding measure, sponsored by John H. Dent (D-Pa.), is presently working its way through the House.

In the meantime, HEW's Office of

Contract Compliance, in the Office of Civil Rights, is negotiating with the universities. However, there are rumblings that negotiations have been slow because the HEW contract compliance staff tends to prosecute racial charges more readily than sex charges. (The Williams Amendment would shuttle some of the charges to investigators in the Department of Labor, who are said to be "professional, thorough, and no-nonsense.") Meanwhile, a new women's action program with a staff of 16 in the Office of the Secretary is looking into HEW's handling of the women's issue generally.

While the individual complaints are starting to pour in—to Michigan officials, to HEW's nine civil rights offices around the country, and to Washington—HEW must try to keep up. But "if we acted on these," said John Hodgdon, HEW Civil Rights Director in Chicago, "there would be a flood. . . . If the women see that we're effective, they will file more charges. If they see we aren't, they won't bother."—D.S.

case once again to William E. McCormick, head of HSRI and the man who had originally denied Clark's request. In a new memo, McCormick urged that it be denied again. Edwards argued that this step was further denial of due process because Clark was not provided with McCormick's data and arguments and was not given a chance to rebut them.

Evidently, Edwards won the due process argument, for Fleming's statement urged that the new procedures "should accord fully with the requirements of due process." In the whole course of Michigan's performance since last fall as a testing ground for ending sex discrimination, the Fleming statement on due process is one of the few clear precedents which can possibly be followed at other colleges.

However the scales tip for Cheryl Clark, events so far have produced a number of lessons. "Personnel officers aren't equipped to be sensitive to this kind of thing," says Judith Lonnquist, the Chicago legal counsel for the National Organization of Women (NOW). "You can't expect them to be." And lawyer Edwards says, "Until now, college personnel offices have been the defenders of the employers. Like management in the early days of the labor movement, they have considered themselves the sole determinants of their employees' futures."

Another lesson is that a body like the Women's Commission cannot afford to ignore individual cases. The Michigan Women's Commission (apparently

regarded by radical women's groups as too "establishment" and by some campus administrators as luckily ineffectual) was originally established after negotiations began with HEW. The commission had first planned to stick to general policy issues. In order to learn about salary problems, the commission made a computer model of the salaries paid to men in specific university research and teaching jobs. The model then predicts appropriate salaries for anyone else, including women, in similar jobs.

Last month during the protests over the Clark case, the commission hired a full-time research worker to pull out the personnel files for individual women whose salaries were more than 10 percent below the model's predicted salaries. But the researcher, Zena Zumeta, says, "What I do then is a touchy political question."

A third lesson is that the sex discrimination issue lends itself to embarrassing commentary by university officials and affects the institution's public image. Earlier this year, Fleming's Assistant for Human Relations, William Cash, was quoted in *The Michigan Daily* and the *New Republic* as saying "once you let women know they've got you over a barrel, they'll take everything they can get from you. Women just make life difficult." And Vice President for State Relations and Planning Fidele Fauri was quoted in the same articles as having said, "In tight times like these we can't afford to have any contracts held up. We just want to get

these bastards at HEW off our backs."

But now Michigan officials pipe another tune: they refuse to comment on the progress, or nonprogress, of the HEW negotiations. Fauri says there is no "intentional" sex discrimination at Michigan. University Public Relations Director Jack H. Hamilton said that he didn't know whether there is discrimination against women at the university. "There is discrimination in society as a whole but at a place as large as the university I wouldn't know."

The university is making no statements about whether the Clark case has hindered the HEW negotiations or retarded approval of an affirmative action plan. However, Lonnquist (NOW) points out that a university which shows good faith and good intentions increases its chances of smooth negotiations. Lonnquist says that providing due process is an effective way for universities to demonstrate good intent. "It makes them look like supergood guys" and "more credible to the outside." Finally, of course, due process minimizes the chances that Clark or someone like her could conceivably take the university to court for denial of her constitutional rights.

As to the future, Clark and other women complaining about unequal pay could have an easier time after the end of this congressional session. Amendments to the nation's basic minimum wage and hour laws now before the House and Senate could require universities to give equal pay for university women.—DEBORAH SHAPLEY

## NOAA and Oceanographic Research "Wet NASA" Idea Dries Up

In the 1960's, before the National Oceanic and Atmospheric Administration (NOAA) was created, NOAA boosters coined the nickname "Wet NASA" for the civilian agency they hoped would lead a multi-billion-dollar technological development program in the oceans. When NOAA came into existence in October 1970, the U.S. economy had slipped, and mounting public concern about the environment had rendered technological development for its own sake an anachronism

of the space era. The Nixon Administration made a half-hearted attempt to restyle NOAA to fit the times by including it in a federal reorganization of environmental activities last fall, but the Administration awarded decision-making authority to the Environmental Protection Agency (EPA). Nine months after its creation, NOAA is an anemic agency without clear identity, which measures its budget in the millions, not billions.

Several major factors have com-

bined to weaken NOAA. The new agency suffers from a lack of Administration support, budget stringencies, and the absence of a constituency. Under NOAA's present leaders, who seem more committed to remaining members in good standing of the Nixon team than championing the nation's marine effort, it is unlikely that the agency will steer the national program on an independent course.

To provide some idea of the limitations on NOAA, it is noteworthy that none of the five areas of marine activity which the Nixon Administration designated in the fall of 1969 as priorities for new initiatives are assigned to the new agency. The five are: coastal zone management, establishing coastal zone laboratories, Great Lakes restoration, the International Decade for Ocean Exploration, and Arctic experi-