

Unions lose equal pay case for childcare workers ^[1]

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Unions have lost a major five-year equal pay case for childcare workers after the Fair Work Commission blasted them for failing to produce "any evidence whatsoever" that childcare work was undervalued due to gender inequality.

A full bench on Tuesday dismissed the unions' application for a 35 per cent pay increase, lodged back in 2013 and subject to more than 70 submissions and a half a dozen hearings, because they failed to show early childhood educators were paid differently to men performing work of comparable value.

The full bench said unions had "elected to place all their forensic eggs in one basket" by relying on a historic 13-year-old ruling "without calling any evidence whatsoever".

"By deciding to eschew the need for evidence and have the matter determined ... 'on the papers', the applicant unions have necessarily fallen short in attempting to satisfy the jurisdictional prerequisite for the making of an equal remuneration order."

United Voice and the Australian Education Union had sought equal pay orders for early childhood educators on the basis the sector was 97 per cent women and qualified early childhood educators earned as little as the half the average wage at \$21 an hour.

Manufacturing no comparison

But the unions made the unusual choice of picking manufacturing workers to prove men were paid more than women for doing comparable work.

Their case was based on a 2005 decision by the workplace tribunal which held work done by childcare workers was "undervalued" and, based on their qualifications and training, it was appropriate to use pay rates under the manufacturing award.

The full bench rejected the sector as a comparator, noting the 2005 case had not considered gender, skills and duties, was based on evidence that was 13-years-old and manufacturing work was "significantly different" to childcare work.

The unions also failed to provide any contemporary evidence to support their claims childcare workers' pay had not kept up with changes to their work in the decade since, including through new national standards for centres.

Predicting its decision would be used to say "the achievement of equal remuneration established by the Fair Work Act is ineffective", the full bench pointed out the union could have pursued their claim as a more conventional work value case.

"However, for reasons which they have not explained, the applicant unions have chosen not to progress these aspects of their application in the current proceedings."

Union blames system, calls for strikes

Nevertheless, United Voice assistant secretary Helen Gibbons sought to blame the Fair Work Act for the loss.

"Our members have over the past five years done everything possible to try and resolve this equal pay issue.

"We have jumped through every legal hoop required and we briefed one of the best legal teams in the country. What this shows is that the system is not fit for purpose to deliver equal pay in the 21st century."

The commission's decision still leaves the Independent Education Union with its equal pay claim for early childhood teachers at long day care centres or preschools.

The IEU's case is set down for hearings later this year and will include contemporary evidence and comparisons to male primary school teachers and engineers.

United Voice flagged shortly before the ruling that early childhood educators would take "unprecedented" strike action across the country on March 27 to demand the government fund equal pay.

The union, whose members are mostly in the not-for-profit childcare sector, said the industrial action would see centres close for a whole day for the first time, while others would close at lunch time and some would close certain rooms.

"We have the community standing with us," Ms Gibbons said. "The community knows that our early education workforce is undervalued, unlike our government and the Fair Work Commission."

"This will only ramp up the campaign to get the government to step in and resolve this situation."

Education and Training Minister Simon Birmingham on Monday dismissed the strike action as a "political stunt" given the government did not employ any childcare workers.

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