

Is the enforcement concern with the proposed wage equality ordinance legitimate?

The Bethlehem Gadfly Wage equality March 9, 2020

 Latest in a series of posts on wage equality 

If there is only a fine, and it requires the aggrieved individual to pay for and initiate the prosecution, something seems missing.
John Rothschild

Forcing people into magistrates' courts greatly increases the initiative required by the employee and makes it more difficult for them to pursue justice. . . . Legislation that is not coupled with meaningful implementation is generally ineffective and tends to be discriminatory.
Peter Crownfield

Wage Equality Memo (1)

On the surface, Councilman Callahan's proposed wage equality ordinance is a no-brainer.

The basic idea is that this ordinance (which is gaining nationwide acceptance) hopes to free women from the spiraling financial trap of beginning their work careers at a low salary while they progress in their careers. Employers will not be able to ask a female applicant her past salary and low-ball her salary-wise on the new job.

But it seems that in other cities the enforcement element of a wage equity ordinance aimed at protecting women from this kind of financial exploitation has been handled by a City Human Rights Commission. In Bethlehem, however, our Human Rights Commission (one of our volunteer ABC's) has previously indicated its inability to handle a projected number of cases that will arise from this ordinance.

Thus, Councilman Callahan, after discussion with the City administration and the Solicitors, has modified what's done in the legislation in other places to make the magistrate court the locus of enforcement here. The aggrieved employee would, on the basis of this

ordinance, bring a case before a magistrate, one in which, Councilwoman Van Wirt avers (with the agreement of Solicitor Spirk), she would most likely need (or be best served) to retain a lawyer.

Councilman Callahan would like our HRC to handle enforcement as it does in other cities, but in their absence he is satisfied with magistrate enforcement, calling Councilwoman Van Wirt's objection a "minor tidbit."

Let's think about this "minor tidbit." It's important.

A hypothetical situation:

You are a young woman working at an entry-level position at a minimal salary. You have gained work experience, you have gained more education or training, you have gained confidence in your ability, you have good references — you apply for a job that would be a "step up" in a career path. You know that Bethlehem has an ordinance that forbids a prospective new employer to ask your current salary. In compliance with the law, there is no such "ask" on the employment application forms. But in an interview, you are unexpectedly asked that question. What do you do? Do you risk blowing the interview by "calling" the interviewer on his or her illegal activity? Suppose the interviewer apologizes — do you go on with the interview? Or do you wait and see what happens? If you get a job offer, you may be glad to get it, even though the salary might seem low to you, and you just swallow the illegality. If you don't get a job offer, you might be angry enough to "stick it" to the employer or reluctant to "waste time" getting your pound of flesh through the legal system.

Role play. You might envision the situation options differently. Gadfly might not have outlined the variables exhaustively or as you see them.

So suppose you do want justice. What happens then? Role play again.

Would you go yourself to a magistrate, or would you look for a lawyer to represent you? What would be the variables, the criteria in such a decision? Do you even know who your magistrate is or where he or she is located? Do you have personal confidence to make your claim in court before a judge, with the employer and (probably for sure) the

lawyer's attorney challenging you? Do you have familiarity with the court system? Have you ever brought a case or ever been in court? How are your language skills? What would your evidence be? Suppose the employer said it didn't happen? Or that you mentioned salary in a way that opened the door to the question? Do you have money to hire a lawyer? Have you ever hired a lawyer? Would you even know about how to find a lawyer, and a lawyer specializing in wage issues? What would you feel you would get out of going to court — a moral victory? striking a "Me too" kind of blow for the cause of women?

As always, as followers know, Gadfly is always open to correction and criticism (and even a disciplinary slap upside the head as administered recently by the Parkers),

but he has to say,

that the weak enforcement objection to the proposed ordinance

is also

to him

a no-brainer.

Which makes the chair's attitude at the February 25 Human Resources committee meeting all that much more puzzling.

Going there again next.

The Bethlehem Gadfly