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Discrimination through Bargaining Structures: Gender Bias in the National Coal Board and British Coal

Ben Fine

Preface

This paper is drawn from the draft of evidence prepared for the National Union of Mineworkers (NUM) in late 1990 in pursuit of an equal-pay claim for female canteen workers and cleaners employed by British Coal. The claim was successful. Evidence was also given by Kathy O'Donnell. We had intended to publish a joint article from our work but she tragically died of cancer before we could do this. Only the third section of my evidence is reproduced here as it stands alone and focuses exclusively on the British coal industry. The other two sections offered literature reviews of the conditions under which equal pay is most liable to be advantageous to female workers, so that it could be argued that British Coal's strategy of denying the equal-pay claim was particularly damaging to them.[1]

I discovered these two papers when looking for something else. Kathy's was there in hard copy but only the first page of mine could be found, overstamped with news of victory as communicated to me by NUM head office by fax (see Appendix). Again, later, and looking for something else, I found an electronic copy of my paper, albeit in WordPerfect (which I had used at the time before moving to Word). I spent some time editing the WordPerfect version in Word, only correcting minor errors. I did try to track down the original in the NUM archives but they have been moved to the Modern Records Centre at Warwick University, where they have yet to be catalogued. I found the case number for the claim (31708/85/LS), but the local tribunal office involved, London South, advised that records of cases were not kept beyond a few years.

1 The full paper is available at https://eprints.soas.ac.uk/38044/ (accessed 1 September 2023).

Reflecting back upon the case, and burying myself in it by going through boxes of evidence (just to find missing citations that were unnecessary for the tribunal as opposed to an academic journal), there are three points of historical interest. The first is that the NUM was complicit in unequal pay until at least 1955. But in 1956 it asked for it to be rectified. That it took twenty-five years to achieve and even almost a decade to succeed under equal-pay legislation is testimony to the principles of the union in practice, for this was a costly and time-consuming exercise for what were a relatively small number of the workforce, a thousand out of hundreds of thousands.

Second, by the same token, pursuit of equal pay, or indeed any other labour tribunal issue, has not turned out to be the easy, informal, costless process that may have been intended. Companies come with big lawyers and obstruct the strongest of cases with whatever points and procedures of law they can. It means that big employers get away with it when a claim is not pursued for lack of funds and energy from plaintiffs, and hence claims are discouraged from even being initiated. Hence also these lawyers need to be matched with the same. As one of the NUM's lawyers put it succinctly to me in a letter, too many of those who had suffered pay discrimination would have died before they could be compensated by the tribunal's decision. This shows what a great and hard-won victory this was for the NUM and its female members.

Last, and by no means least, the miners' strike of 1984–85 sits almost exactly at the midpoint of the nine years between the initiation of the case and its settlement. Following the strike, the union's funds were severely depleted. Yet the continued commitment to the case meant that no expense was spared in bringing it to a successful conclusion.

Introduction

In its analysis of the pay determination of canteen workers employed by British Coal, this paper serves as an introduction and background to the article by Kathy O'Donnell,[2] who argues that in all but name the canteen workers were part of a single bargaining structure that included male, surface mineworkers. Their relative pay closely followed that of the lowest grade of surface workers but at a discount of about 20%. Two points emerge very clearly. First, job segregation formally allowed women workers to be placed in a separate grading structure but, even if there was some overlap between the two at the bottom of the one and at the top of the other, the situation was

2 K. O'Donnell, 'Canteen Workers' Wages and Collective Bargaining in British Coal', *Historical Studies in Industrial Relations* 44 (2023), pp. 75–89.

one in which there was no effective difference from the operation of a single grading structure. But for this institutional segregation, there would have been a much more transparent instance of pay discrimination.

Second, and more importantly, the formal separation into two grading structures was associated with avoidance of what had been the most effective mechanism by which a move towards equal pay was implemented in other sectors of the economy. Placing women workers even on the lowest grade of the joint scale with male workers proved to be of significant benefit to women workers. The avoidance of this by British Coal must be considered a deliberate policy to minimize the impact of the Equal Pay Act 1975. Separate pay scales have been a device for preventing the harmonization of minimum-pay scales for men and women.

Such a conclusion is strengthened by turning around the central issue. Subject to a job evaluation exercise, suppose the canteen workers had been placed on a combined scale with male workers – would they have benefited from equal-pay legislation? The answer is unambiguously positive. With a few minor exceptions, the characteristics of employment in the coal industry were such that women were most likely to have been granted equal pay on a minimum grade with men, given a single grading structure with them, especially assuming that they did indeed perform work of equal value (a matter beyond the scope of this paper).[3] The reasons for this are as follows.

First, British Coal had a highly developed grading structure which had been modified over time. There seems no reason why it could not have been successfully extended to cover canteen workers. The NUM had first proposed a uniform grading structure in 1950, which in 1955 eventually led to the first Daywagemen's Agreement. To arrive at this, 6,000 separate local job titles were assigned to 300 categories, which in turn were grouped in five underground grades, five surface grades, and three grades for craftsmen. Subsequently, the 1966 National Power Loading Agreement assimilated, following a whole series of district agreements, most of those miners who had been on piecework. Finally, the 1971 Third National Daywage Structure Agreement encompassed other coalface workers, eliminating all remaining piecework and task work. The 1980 revision of the wage structure brought into operation a new wages structure. In 1987, a National Grading and New Technology Committee was established to address the (re)grading issues raised by implementation of new technology. This meant that grading structures were under continual revision, review, and negotiation to take account of new tasks as they arose (and to compare them with old ones).

3 Separate grading had the effect of attempting to avoid this evaluation, along with associated claims for equal pay.

The complexity of the wages structure inherited on nationalization in 1948 was so great that its rationalization was delayed for a decade, and then staggered over a fifteen-year period before covering the bulk of the workforce. As Sales and Davies noted, the daywagemen and pieceworkers could not be handled simultaneously because of the enormity of the task involved.[4] Consequently, the formal exclusion of the few grades of canteen workers from this evolving wage structure was a deliberate bargaining policy by the employer, consistently maintained over a long period. It was not a matter of administrative convenience, nor of economic logic. It is worth recalling that the NUM had asked as early as 1953 that the lowest canteen rate be based on the surface-worker minimum rate, with corresponding rates for other canteen grades.[5]

Second, supposing that British Coal had extended its grading scheme to canteen workers, conditions were highly favourable for such a scheme to have been relatively free of gender bias. British Coal was highly skilled in job evaluation, there had been employee participation, and this involved a sophisticated and experienced personnel department (with a special division for industrial relations).

Third, job evaluation of manual workers would, given the experience of other industries, have proved supportive of moves to equal pay. Fourth, the establishments concerned did include some large-scale mines as far as number of employees was concerned, even if not all were large-scale workplaces by industrial standards. Fifth, there was an extremely high density of union membership. Sixth, bonus schemes and overtime were important so it would have been possible to have retained a male-earnings differential.

On the other hand, moves to increase women's pay were constrained by other factors. First, there was an extreme imbalance in the proportion of men and women employed. Second, there was limited representation of female workers within the NUM – as officials, in negotiations, and in attending meetings. There had only rarely been a woman branch committee member (apart from the NUM's Colliery Officials and Staffs Area), and women had never negotiated their own pay and conditions, which were appended to the main negotiations. Third, there was the presence of part-time women workers. Fourth, there was the apparent adoption by the employer of an avoidance or minimization strategy.

Given the union's stance, of these negative factors, only the last was important in the sense that it would have rendered the others irrelevant if it were otherwise. Had the employer been committed to an equal-pay policy and, as part of this, a more unified bargaining structure, experience from

4 W. H. Sales and J. L. Davies, 'Introducing a New Wage Structure into Coal-Mining', *Bulletin of the Oxford Institute of Economics and Statistics* 19:3 (1957), pp. 201–24.

5 Joint National Negotiating Committee (JNNC), 30 April 1953.

elsewhere suggests that men and women workers would have shared at least a common minimum grade. It must be concluded that the formal rejection of a common bargaining structure by the employer was a deliberate policy to prevent a situation arising which in other industries had proved advantageous to women's claims for equal pay.

The historical experience

In a number of ways this was confirmed by the historical experience of the coal industry. First, the formal separation of bargaining structures meant that job evaluation across the entire workforce (including canteen workers) was avoided. Yet such schemes appear to require frequent reassessment, especially where rapid technical change is involved – which was certainly so for coal mining and arguably also applicable to canteen workers, given the new technology in food preparation. And it is generally the case that, for women, job evaluation exercises do positively affect job hierarchies, especially with a joint commitment to eliminate gender bias.

Second, there has been a history of unequal pay in the coal industry. In the evolution of the grading structure, it is important to note that this was done in the absence of gender differentiation. Although there were no female underground workers, there were women surface workers who were assimilated to the same grades, but not pay, as men. Unequal pay was cemented into the wage structure, not the grade structure, by the simple expedient of paying women doing the same job a wage set initially at a level of 80% or so of the male rate.

Before 1969, then, there were separate scales for men and women doing the same jobs, with women receiving substantially lower pay when on the same grades. For example, the 1968 wage agreement included the following pay levels for surface workers after a 2*s*. 6*d*. (12.5p) weekly flat-rate increase per shift, subject to a limit (shown in Table 1) not being exceeded, with women hitting the top level lower than the men's, for each of three grades.[6]

Table 1: 1968 wage agreement

Surface Grade	**Male**	**Female**	**Male**	**Female**
	Standard		**Limit**	
I	47*s*. 4*d*.	42*s*. 5*d*.	56*s*.	42*s*. 5*d*.
II	46*s*. 1*d*.	41*s*. 2*d*.	55*s*. 9*d*.	41*s*. 2*d*.
III	45*s*. 5*d*.	40*s*. 6*d*.	55*s*. 9*d*.	40*s*. 6*d*.

6 JNCC, 16 January 1969, memorandum of agreement, p. 538, see also JNCC, 25 February 1969, p. 550.

In the specific case of canteen workers, the ingrained inequality of pay for men and women doing the same jobs was combined with a formal exclusion of canteen workers from the main body of grading and bargaining. Thus the 1955 pay agreement contained the following 'spiral' of unequal pay (given in shillings and old pence, with decimal equivalents): a canteen manager controlling between thirty-one and forty workers (the highest grade) earned a rate of 203*s*. 9*d*. (£10.19) compared to a manageress rate of 157*s*. 6*d*. (£7.88); this compared with a rate for a male cook of 156*s*. 3*d*. (£7.81), whereas a female cook earned 104*s*. 5*d*. (£5.22). The latter was equivalent to the wage of the lowest-paid, twenty-year-old male.[7]

After failing to persuade the NCB to assimilate canteen workers with the minimum pay for surface workers, in 1953 the NUM proposed that a national agreement for canteen staff be set at a rate of 50% above the rates of the Industrial and Staff Canteen Undertakings Wages Board (ISCUWB). The NCB refused and offered a range up to 25% above the wages council rates; this was eventually agreed. Subsequently, in 1956, the NUM did press for equal pay for canteen workers:

> That we submit proposals to the Board that:
>
> (a) the principle of equal pay be applied to colliery canteen and snack bar personnel; and
>
> (b) the Board supply heat and lighting to colliery canteens, without charge.[8]

This was met with the following response:

> The Industrial Relations Member of the Board stated that the conditions of service of colliery canteen and snack bar staffs were, by agreement with the Union, governed by the Orders made from time to time by the Industrial and Staff Canteen Undertakings Wages Board. These Orders did not at present provide for equal pay, and unless and until such an Order was made, the Board could not concede the Union's claim.[9]

This is of some importance since it shows that comparability with the rates was used, in part, to negate claims for equal pay. In practice, however, it did not serve as a basis for determining canteen workers' pay. Over the

7 JNNC, 8 December 1955, pp. 1075–79.

8 Meeting of the Union's Representatives on the JNNC, 21 November 1956, p. 1792.

9 Meeting of the Union's Representatives on the JNNC, 20 February 1957, p. 1831.

period from 1963 to 1976, the differential varied from as little as 15.4% (1967–68) to as much as 99.2% (1974–75), having been set at 25% in 1955. The wages council rates seem to have served as a number to think of first before coming up with another number by which to multiply it! The tracking of the timing and the level of pay awards to mineworkers and, paradoxically, comparability with the minimum rates for surface workers remain the strongest explanation of canteen workers' rates of pay. This despite the NCB's view that agreements covering canteen workers were 'designed to dissociate the wages and conditions of service of male and female employees from Agreements relating to the coalmining industry'.[10]

In short, historically, with the NUM's compliance, the NCB had discriminated against women by paying them 20% or so less than men in the same grades, but also, against the union's wishes, it had formally dissociated canteen workers from mineworkers' pay structure and refused them equal pay.

Evading equal-pay legislation

This situation changed in 1969 when, presumably in anticipation of equal-pay legislation, the distinction between male and female grades was abolished, with women taking a male wage rate.[11] The way in which this was done, as evidenced by the limited scope of the agreement, can only be interpreted as designed to comply minimally with the requirements of the first round of equal-pay legislation. After that, the ratio of canteen workers' pay to that of surface workers remained remarkably close to the 80% differential that had effectively been previously proposed by the NUM (in assimilating male canteen workers to the lowest surface-worker grade and female wages to 80% of the male). After 1969, however, the union changed its position and pressed not only for a unified grading structure for all surface workers but also for the de facto linking of the pay and conditions of canteen workers to those of surface workers to be acknowledged in considering equal pay. It argued that British Coal refused to recognize this point formally in order to avoid equal-pay claims (this is consistent with the evidence presented here).

Pay discrimination against women was the consequence of choosing a wages council as an external reference point for pay determination. The wages council system had its origins in the 1909 Trade Boards Act, which, after incremental growth, was given a new structure by the Wages Councils Act 1945. In the absence of effective employers' associations and trade

10 JNNC, 30 April 1955 (in wake of the 1955 Revision of the Wages Structure Agreement), p. 1074.

11 JNCC, 16 January 1969, memorandum of agreement, p. 538.

unions to determine pay and conditions by collective agreement, a wages council – composed of equal numbers of representatives of employers, workpeople, and independents – was charged with establishing statutory minimum rates of pay. It had been envisaged that a council would be abolished once voluntary negotiating machinery was established. However, trade unions felt that in practice the minimum operated as a downward pressure on wage levels:

> Wages Councils do not set earnings, their function is to set statutory minimum rates of wages and it is on this basis that they must be judged. Rates set by Councils may influence earnings but a primary function of the Wages Council system is to set reasonable minimum time rates for the workers covered by Wages Council legislation. The system has been regarded for most of its history as a temporary substitute for maintaining wage levels until organization of trade unions and employers' associations reached sufficient levels for voluntary maintenance and there has been an implicit desire on the part of legislators, commentators and interested parties for the statutory system to be gradually replaced by voluntary means for setting minimum rates.[12]

It follows that wages council workers were liable to be both low paid and low in union density.

This seems to have been especially true of the ISCUWB, as revealed in a study by Christine Craig, Jill Rubery, Roger Tarling, and Frank Wilkinson of the impact of the abolition of wages councils, which included the ISCUWB (abolished in 1976).[13] The catering sector was distinctive in that it did not produce a commodity for sale outside the enterprise (and hence was not subject to downward wage pressure from the competition between firms in the product market), and in that the workers were inevitably a small proportion of those employed. In other words, canteen workers were scattered across many different places of employment, in relatively small numbers: 'Catering workers are particularly vulnerable because they are separate from the main labour force, work in small units, and are peripheral to the main interests of the employers and unions in their workplaces.'[14] In a later paper, the same authors found that union membership was

12 R. Steele, 'The Relative Performance of the Wages Council and Non-Wages Council Sectors and the Impact of Incomes Policy', *British Journal of Industrial Relations* 17:2 (1979), pp. 224–34, at p. 225. See F. J. Bayliss, *British Wages Councils* (Blackwell, Oxford: 1962).

13 C. Craig, J. Rubery, R. Tarling, and F. Wilkinson, *After the Wages Council: Industrial and Staff Canteens* (University of Cambridge, Department of Applied Economics, Labour Studies Group: 1980).

14 *Ibid*., p. 105.

highest in the medium and large companies, and in the public-sector establishments.[15] In 45% of private-sector establishments there was no union present at all.[16] Given the high level of union membership among canteen workers in the coal industry, it follows that their wage levels were dragged down by comparison with canteen workers as a whole. It was also the case that collective-bargaining arrangements were liable to have been less favourable in the sector as a whole, with these often being absent altogether or conducted exclusively at a local level. The low level of pay associated with subcontractors was also liable to have been a factor in the downward pressure on wage levels. Thus the NCB had sought, by not formally recognizing that canteen workers belonged to the same bargaining structure as mineworkers, to neutralize the bargaining advantages that the canteen workers might have gained by their high level of union membership.

This was confirmed by evidence of wage settlements at the time and long after the ISCUWB had been abolished. A study by the Labour Research Department reviewed thirty-three pay agreements for canteen workers from 1986 to 1989 and found that the pay ranged from £87.75 to £187.08 per week (with the median at £113.13). It concluded that separate bargaining for canteen workers meant lower levels of pay:

> For canteen assistants covered by agreements which have separate grades for canteen workers or lowest grades which do not apply to non-canteen staff, the weekly basic average rate is £97.00. However, canteen workers who share a lowest paid grade with non-canteen staff have an average basic of £117.46 a week ... The technique of abolishing lowest grades is increasingly being used by bargainers to improve the position of the lowest paid workers, and if this were used to apply to canteen workers otherwise covered by separate grades a major area of pay discrimination would be removed.[17]

It follows that the NCB chose, as the standard for fixing its canteen workers' wages, the wages of employees in a considerably worse bargaining position, and it attempted to neutralize the impact of the NUM's strength in pressing for higher wages, especially for equal pay, through the device of formally separate bargaining structures. The first point was well illustrated by the results of the post-abolition survey by Christine Craig, Elizabeth Garnsey, and Jill Rubery, who found that as many as a

15 C. Craig, J. Rubery, R. Tarling and F. Wilkinson, *Labour Market Structure, Industrial Organisation and Low Pay* (Department of Applied Economics Occasional Papers 54: Cambridge University Press: 1982), p. 45.

16 Craig *et al*., 'After the Wages Council', p. 36.

17 Labour Research Department, *Bargaining Report*, 'Canteen Staff Pay', January 1988, p. 13.

third of establishments paid hourly rates less than the minimum set by the remaining wages councils that covered other catering and related staff.[18] Underpayment was highest where the majority of women worked part time, illustrating the implicit linking, in principle, of this source of low pay to corresponding wages in the coal industry.

In what might be termed the 'tea-lady principle', these workers were (and still are) in the weakest of labour market conditions, where, for example, given their childcare responsibilities, they were confined to limited job opportunities within local labour markets.[19] Often working part time, with few alternative job opportunities, they were poorly unionized and had few colleagues with whom to organize collectively. The job was precarious, squeezed between the threats of staff making their own tea arrangements, on the one hand, and of displacement by a drink-dispensing machine, on the other. Clearly, such workers required the protection of the wages council system. But it must be doubted whether they were the relevant standard for comparison for canteen workers in the mining industry! The minimum weekly pay for the ISCUWB in 1974 was £12.25 when the TUC was recommending a minimum wage target of £30 per week.[20]

In practice, British Coal always paid above the wages council rates. This was not unusual in industries covered by wages councils where trade unions and collective bargaining were present. Nor was this surprising, for such conditions rendered a wages council redundant. This begs the question of why British Coal should have insisted upon token indexation to wages council rates up to 1976 and to have fixed wages subsequently, 'dissociated from Agreements relating to the coal industry'.[21] Indeed, if it had been serious in this regard, and wished to be consistent with its stated policy of the past, it would have continued to link pay, at least nominally, to the continuing wages councils covering canteen and related workers.

British Coal, however, did insist on a bargaining structure that effectively divided men from women, with the latter paid less. Craig *et al*. reported that the 'rates of pay were likely to be highest in the large highly unionised establishments following collective bargaining agreements which related canteen workers' pay to that of the main workforce'.[22] Although this was

18 C. Craig, E. Garnsey and J. Rubery, *Payment Structures and Smaller Firms: Women's Employment in Segmented Labour Markets* (Department of Employment Research Paper no. 48, 1984), p. 53.

19 An index of British Coal's policy of tying canteen workers to the local labour market conditioned its denial to them of the transferred-workers scheme, even though they were eligible for the Redundant Mineworkers Scheme.

20 Craig *et al*., 'After the Wages Council', p. 69.

21 Meeting of the Union's Representatives on the JNNC, 20 February 1957, p. 1831.

22 Craig *et al*., 'After the Wages Council', p. 100.

less common in the private sector and not a guarantee of adequate rates of pay in the public sector, 'the most successful results of integrating catering workers with the main pay structure were in the public sector'.[23] In short, 'The ideal arrangement for the canteen workers is for them to be integrated into scales applicable to other manual workers, so that they automatically receive the same increases as other workers; they are also more likely to have benefitted from the introduction of equal pay.'[24]

The formal avoidance of such an arrangement by British Coal disadvantaged occupationally segregated women workers. This policy echoed the overt discrimination against women in the period prior to 1969. Nor was this apparently motivated by the extra wage costs involved, as it was estimated that if the wage of a canteen attendant were made equal to that of the lowest-grade surface worker, and other differentials were maintained, then the increased cost would be as little as 0.1% of the annual wage bill. Surely a very small price to pay for a non-discriminatory wage policy?

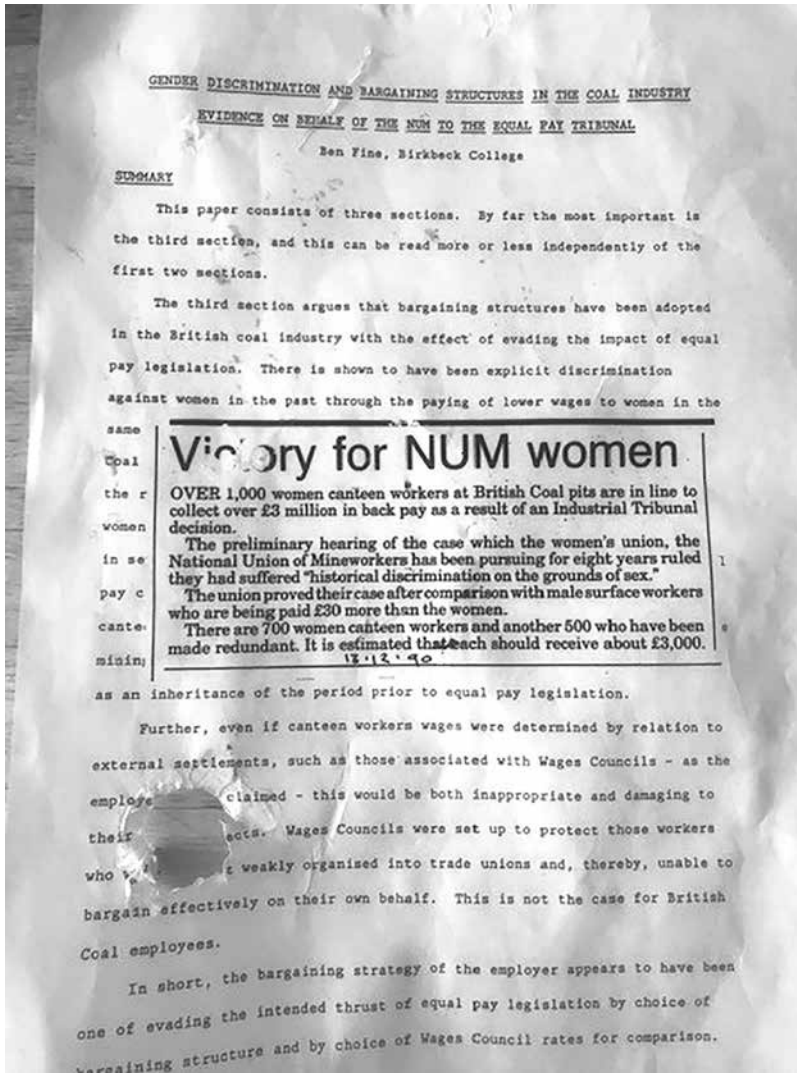
Less information was available on the conditions governing the (relative) pay of cleaners. But similar conditions appear to have applied. British Coal categorically refused to include ancillary workers (such as cleaners) within the mineworkers' terms and conditions and maintained the view that their pay was best dealt with by comparison with local authority terms and conditions, as determined by the National Joint Council for Local Authority Manual Workers.

This had the effect of separating cleaners' pay bargaining from workers in the coal industry and linking them to other workers who were liable to be less well placed in the labour market. Again, separate bargaining structures seem to have been deliberately adopted and maintained in order to pay women a lower rate. This was a practice from the earliest days of nationalization, following the Increases in Wages Agreement, 18 December 1947, and the Ancillary Workers Agreement, 5 August 1948. A further anomaly was the difference in treatment of male and female office cleaners as the former were assimilated into the mineworkers' grading system at a level of grade S6. So male surface workers were to be treated as if low-grade miners but females as not miners at all, using such grading to avoid equal-pay legislation.

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23 *Ibid*., p. 106.
24 *Ibid*., p. 40.

Appendix



GENDER DISCRIMINATION AND BARGAINING STRUCTURES IN THE COAL INDUSTRY

EVIDENCE ON BEHALF OF THE NUM TO THE EQUAL PAY TRIBUNAL

Ben Fine, Birkbeck College

SUMMARY

This paper consists of three sections. By far the most important is the third section, and this can be read more or less independently of the first two sections.

The third section argues that bargaining structures have been adopted in the British coal industry with the effect of evading the impact of equal pay legislation. There is shown to have been explicit discrimination against women in the past through the paying of lower wages to women in the same coal the r women in se pay c cante minin

Victory for NUM women

OVER 1,000 women canteen workers at British Coal pits are in line to collect over £3 million in back pay as a result of an Industrial Tribunal decision.

The preliminary hearing of the case which the women's union, the National Union of Mineworkers has been pursuing for eight years ruled they had suffered "historical discrimination on the grounds of sex."

The union proved their case after comparison with male surface workers who are being paid £30 more than the women.

There are 700 women canteen workers and another 500 who have been made redundant. It is estimated that each should receive about £3,000.

13·12·90

as an inheritance of the period prior to equal pay legislation.

Further, even if canteen workers wages were determined by relation to external settlements, such as those associated with Wages Councils - as the employ claimed - this would be both inappropriate and damaging to their ects. Wages Councils were set up to protect those workers who t weakly organised into trade unions and, thereby, unable to bargain effectively on their own behalf. This is not the case for British Coal employees.

In short, the bargaining strategy of the employer appears to have been one of evading the intended thrust of equal pay legislation by choice of bargaining structure and by choice of Wages Council rates for comparison.

Victory for NUM Women
Source: See Preface