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Abstract

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Keywords

workplace conflict, dispute resolution, New Zealand, conflict management

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Transforming New Zealand employment relations: at the intersection of institutional dispute resolution and workplace conflict management

In New Zealand, the contemporary shift from highly regulated, collectivist employment rights to individual employment relationships included statutory direction to mediation. Good faith negotiation in the workplace and state provision of mediation were to be the primary mechanisms for resolution of 'employment relationship problems' (ERP). This paper investigates the intersection between workplace conflict management and institutional provision of mediation. We investigated ERP resolution by drawing on empirical evidence from 38 narrative interviews where participants recounted experiences of employment relationship problem (ERP) resolution. We analysed 243 ERP by comparing *settlements* to end employment relationships with *resolution* of ERP where relationships endured. We sought to understand why some ERP remained *unresolved* and/or *escalated.* We found that collaborative reflective sense-making had a positive impact on early workplace problem resolution while investigation and confidential settlement negotiations risked injustice. We present, therefore, some suggestions for embedding collaborative conflict management in the workplace.

Introduction

In New Zealand for more than 100 years, a highly regulated system of industrial relations controlled conflicts between unions and employers with the aim of protecting workers rights and minimalizing economic and social disruption from strikes and lockouts (Rasmussen and Lamm, 2002; McAndrew, Morton & Geare, 2004; McAndrew 2010; Rasmussen and Greenwood, 2014; Greenwood, 2016). Rasmussen and Greenwood, (2014, pp. 450-453), illustrated shifts in objectives, processes and outcomes of dispute resolution legislation that historically regulated the tripartite relationship between government, unions and employers. This article begins by briefly discussing the impacts of the contemporary shift (1973-2016) from arbitration to mediation of 'employment relationship problems' (ERP) in New Zealand's institutional state-funded dispute resolution system.

The second section of the article explains the research approach, data collection and analysis. The ensuing discussion identifies tension in the ERP system where complaint, conflict management and institutional provision of mediation intersect. We found, early collaborative sense-making processes had transformative potential for resolving problems in employment relationships, thereby preventing escalation of ERP. We conclude by reflecting on how a sense-making approach could influence ERP resolution policy and practise.

The contemporary shift from collectivism to individualism

New Zealand has followed the American employment relations trend of a rise in "alternative dispute resolution in the individual rights era," (Colvin, 2012: p.549). However, there are tensions in the contemporary New Zealand system. It is possible there is growth in confidential negotiated exit-settlements by evaluative mediation of grievance

ERP, thus low paid workers may see little benefit in pursuing their ERP claims (McAndrew, 2010). If so, it is possible statutory direction to consensual interest based negotiation (IBN) or a facilitative problem solving approach to mediation can mask injustice in complex circumstances. This section of the paper traces the emergence of the contemporary ERP resolution system in the individual rights era.

The Industrial Relations Act (1973) heralded the beginning of significant changes from collective bargaining and arbitration to individual grievance, where union members gained the right to personal grievance (Anderson, 1988). The ideological shift to competitive market economies, deregulation, privatisation and individualism of the mid-1980s and 1990s provided political momentum for the Employment Contracts Act 1991, which abandoned the "traditional arbitration system…and individual bargaining was elevated in status" (Rasmussen, Foster, & Murrie, 2012, p.3). The associated changes in employment policy included the deregulation of collective bargaining and union membership, accompanied by institutional change in the delivery of employment dispute resolution. However, a hybrid bargaining-mediation-arbitration approach influenced institutional dispute resolution practise. There were parallel trends: the deregulation of the economy and weakening of trade union density coexisted with the rise in personal grievance cases before the Employment Tribunal (Rasmussen and Greenwood, 2014, p.457).

The Employment Contracts Act 1991 (ECA) mirrored economic liberalisation legislating for individual employment contracts, and grievance filing was notable for adversary and legal representation. Decentralised bargaining, a reduction in union effectiveness, and the right to take 'personal' grievances irrespective of union affiliation, led to increased cases in the Employment Tribunal. The backlog of cases seeking mediation and adjudication was unsustainable (Dell & Franks, 2009). Peel and Inkson (2000) noted

that the collectivist tradition was rejected and individual "workers were becoming more litigious in their approach to employment issues" (p.209). Peel and Inkson (2000) asserted that increased litigiousness in employment related to transactional approaches to negotiating employment contracts. Parties and their legal advocates took an adversarial rights based approach to mediation and adjudication provided by the state.

The shift from contractual rights to relational problem solving

The Employment Relations Act 2000, aimed to change negotiation behaviour and transform adversarial processes by requiring good faith bargaining behaviour and reframing legal language. The employment 'contract' became an 'agreement' about the nature of the employment 'relationship'. The Attorney General stated:

> "*To use the language of relationship was to try and get people to recognise that it isn't entirely legal, that we're not just talking about a legal relationship, but we're talking about a human relationship that is, by and large, hopefully ongoing. So therefore, it requires a different approach, I suppose, than the strict adversarial legal approach to everything.*" (Hon. M. Wilson, in Greenwood, 2016: p.68).

The legislation signalled a shift toward early collaborative processes of dispute resolution with innovative goals of building relational trust through good faith behaviour 'in all aspects of the employment environment' and problem solve relational conflict by mediation. The object of the ERA is - *to build productive relationships through the promotion of mutual trust and confidence in all aspects of the employment environment and of the employment relationship –*

> i) *by recognising that employment relationships must be built on good faith behaviour; and*

ii) *by acknowledging and addressing the inherent inequality of bargaining power in employment relations; and*

iii) *by protecting the integrity of individual choice; and*

iv) *by promoting mediation as the primary problem-solving mechanism; and*

v) *by reducing the need for judicial intervention.*

The fundamental mechanism of the Employment Relationship Problem (ERP) resolution system was Wilson's drive for a "free, fast and fair" mediation service (Wilson, 2000, p.1). The aim was self-determination where 'parties resolved employment problems for themselves' at the level of the workplace and retained the ability for individuals to take an ERP to the state Mediation Service whether or not it involved a personal grievance. This was a clear direction for organisations to engage in conflict management by problem solving at the level of the workplace.

The ERA 2000 broadly defines an ERP as:

> *A personal grievance or a dispute, and any problem relating to or arising out of an employment relationship, but does not include any problem with the fixing of new terms and conditions of employment* (Employment Relations Act 2000, Part 2, s5).

The legislative objective was for employers, unions, individuals, legal representatives and employment relations institutions to adopt a flexible approach to ERP with the state providing early assistance for resolving workplace problems through 'active mediation services' (ERA 2000 Section 143 (a-da)). Mediators were to value flexibility and speed of delivery. Section 145 (2a-cii), enabled mediators to respond to requests, identify how, where, and when their services could best support, and

determine the time and place (including wherever practicable the workplace itself), that were most likely to resolve the problem in question.

Mediation

The State funded (free) mediation providers, the New Zealand Ministry of Business Innovation and Employment (MBIE), defined mediation broadly as:

> A process whereby parties are assisted to resolve a problem between them by an independent, impartial third party in a confidential forum. The mediator has the role of encouraging those with a problem to explain what has occurred, to discuss the pros and cons of the difference that has arisen, and to come to a resolution that is satisfactory to both parties.
>
> http://employment.govt.nz/er/services/mediators/what-is.asp

This definition of mediation uses the language of a 'facilitative approach' where the mediator assists the parties in a process of self-determined problem solving. While the state institution had the mandate to provide mediation as an informal problem solving process at the level of the workplace, there was resistance to the flexible 'free, fast, fair' in the state mediation service. Mediation professionals from the former Employment Tribunal, resisted change, were slow to adapt and legal representatives applied a rights based approach to the new system. An evaluation of the Mediation Service contended that it had been perceived as a "formal route to settlement" and "often a last resort" (Department of Labour, 2007b, p.3), rather than an early step in the process of ERP resolution. Contrary to the goal of early problem solving to build trust and maintain employment relationships, perceptions of mediation were of a process to end relationships. This raised the question of employee access to justice if employers engaged in confidential mediation to negotiate termination.

Walker's (2009) 14 case studies of personal grievance mediations in the Mediation Service suggested that an imbalance of power negatively affected outcomes. He argued, "Employers held considerable power, it was employees who lacked influence and, despite their attempts at restoration, typically felt unjustly forced from jobs they wanted to keep" (Walker & Hamilton 2010a, p.104). Recent research by MBIE (2014a) concluded that there was a need for improvement in mediation service delivery because those most satisfied were large employers represented by the human resource management (HRM) departments. The recommendation was to "do more for inexperienced and one-off users, reaching out to them earlier to help avoid protracted disputes and providing information where needed (p.28)". Morris (2015) researched styles of employment mediation by surveying 17 MBIE mediators and conducting four in-depth interviews. The analysis concluded that an evaluative (rights based, expert case evaluation and recommendations) and settlement (positional bargaining concession making) styles were more predominant in practise than the facilitative (interest based problem solving) approach to mediation. Morris (2015) found that while the problem solving facilitative approach "was at the heart of the statutory regime" problem solving "featured more strongly in policy documents and training than in mediators' practices" (Morris, 2015 p 223).

A common theme of the research is that settlement mediation dominated over a facilitative approach, evidenced by Walker's (2010) research on parties' experiences, Morris's (2015) research on mediators self-reported styles and MBIE's (2014a) research. The triangulation of data from the above three analyses suggests settlement mediation is more prevalent than ERP resolution and restoration of ongoing employment relationships. According to MBIE mediators, Cotter and Dell (2010, p.7), *settlement* mediation was 'normally implemented' when the outcome was more important than the relationship and the parties wanted no future relationship. This situation was common because by the time

many parties sought mediation, the relationship had already ended; reinstatement was not a viable remedy nor was the relationship tenable. Thus, so-called 'exit mediation', which sought a suitable 'settlement' was aiming for negotiated confidential compensation (McAndrew, Morton & Geare, 2004; Walker, 2009). The Department of Labour reported that the majority of mediation cases (62–86%) taken to the Mediation Service involved employee "personal grievances" (Department of Labour, 2010). The shift to fast, free, equitable access to mediation, assumed employees, employer, unions, employer advocates and regulators would resolve problems at the level of the workplace. This was clearly not happening.

The reasons for the disjuncture between policy objectives and outcomes of the ERP system (Greenwood and Rasmussen, 2017), is unclear. While skilled mediators can apply whichever model of mediation to the appropriate context, parties to conflict and organisational stakeholders may not have the same understanding or knowledge of options for approaches to mediation or conflict management processes. The weakness is at the intersection between institutional delivery of mediation services and workplace conflict management.

Parties to mediation may not have experienced effective processes for workplace conflict management. Walker and Hamilton (2010a; 2010b) found a lack of empirical data about steps taken in organisations to handle grievances before reaching the state funded mediation service. They identified a lack of research examining internal conflict management processes and systems at the level of the organisation. Emerging questions included whether confidential settlement mediation advantaged employer interests. Roche and Teague, (2012:448) warned of interest based processes disguising individual rights based grievance. Research has not discovered whether mediation is serving the interests and/or rights of individual grievance ERP. In-depth investigation of

the circumstances in which ERP are resolved, settled or escalated was called for by the Employment Court.

Chief Employment Court Judge, Hon Judge Colgan's judgement in *Lewis v Howick Board of Trustees* claimed procedural 'legalism' was contributing to unnecessary escalation of ERP in the education sector. Two prominent education cases in the Employment Court (*Lewis v Howick Board of Trustees* and *McKean v BoT of Wakaaranga School)* were examples of inappropriate investigation, early adversarial involvement of lawyers and insurers described as 'legalism' by the Chief Employment Court Judge. Hon Judge Colgan commented on 'legalism' driving ongoing unnecessary escalation of conflict in the judgement *Lewis v Howick Board of Trustees* when he said*:*

> This is the second recent teacher employment case in which this court has been moved to comment on the procedural domination of lawyers, legal issues and legalism ….. Both cases illustrate the potential for dealings between parties to teaching employment relationships to become prematurely and unduly legalistic *(Lewis v Howick College Board of Trustees [2010] NZEMPC 4 ARC 82/08, para122).*

McAndrew (2010) found empirical evidence that where there was involvement of external advisers, lawyers or advocates, it "lifted the stakes considerably" (p.80), and, "internal resolution directly between parties without outside assistance was the quickest and least expensive resolution to obtain" (McAndrew, 2010, p.80). While there has been research about the employment relations institutions and collective bargaining, there has been little attention paid to processes within the organisation that involve individuals themselves resolving conflict through face-to-face negotiation, or the early mediation of ERP. In 2010, there was little or no theory that explained the interface between conflict

management at the level of the workplace and institutional state provided alternative dispute resolution. The judgement in *Lewis v Howick Board of Trustees* prompted the qualitative study (Greenwood, 2016) that informs this paper.

Research Design

The goal of our qualitative research was to build empirical, theoretical insight into the nature of employment relationship problems (ERP), and, discover processes for effective workplace conflict management in the legislative context of state direction to early mediation. The research was located in the New Zealand primary school sector but the research questions were wider. The aim was to discover:

1) What types of workplace conflict and employment relationship problems are experienced?

2) How were conflict management policies, processes and practices implemented in the workplace?

 3) How did participants understand ongoing employment relationship problems?

4) How were conflict and ERPs resolved, and

5) Why did problems, escalate, settle, resolve or remain unresolved?

The interpretive research was qualitative, by theoretical sampling implementing inductive, iterative processes of data collection, analysis, literature review and application of extant literature occurring simultaneously. There were 38 qualitative semi-structured, face-to-face in-depth interviews. Participants[1] reflected on recent (within 2 years) retrospective or current stories of ERP they had experienced. In excess of 260 reflections

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[1] The participants included: 9 principals; 6 deputy assistant or associate principals; 6 past or present members of boards of trustees; 4 employment relations investigators; 6 mediators;6 experts in education and/or employment relations including leaders from the New Zealand Education Institute–primary teachers' union (NZEI); and from The Board of Trustees Association (NZSTA); and 1 scale A teacher who requested inclusion.

on ERP episodes surfaced. Memos of observational data about settings, processes, policies, communications and relationships within schools noted elements such as the aesthetics of the physical environment, non-verbal communication of participants and any relevant insights or reflections directly following interviews. Observational data informed analysis and discussion throughout.

Drawing on grounded theory method (GTM), (Charmaz, 2006, Corbin, & Strauss, 2008; Urquhart, 2013) for data collection and analysis, the interviews were transcribed, read line by line and open coded. The ERP were initially coded and compared by participant, then coded for common constructs (e.g. 'low trust') and compared across situations (Charmaz, 2006; Corbin, & Strauss, 2008; Urquhart, 2013). Coded constructs by type (for example, parental complaints), compared with conflict management processes, substance and outcomes. Sub-categories emerged from a process of comparison. Themes emerged from the analysis of sub-categories. ERP that resolved compared with cases that escalated and/or employment relationships that ended had been analysed in-depth for similarities, consistencies and inconsistencies.

While institutions of the state collect aggregate data of the number of personal grievances filed annually (Rasmussen and Greenwood, 2104, p.462), there is little meaningful in-depth data about the nature, or outcome of ERP in the workplace. Aggregated numbers of ERP do not signify what happens at the level of the organisation. After tabulating 261 distinct ERP from interviews we found 10 significant ERP recounted repeatedly and 8 ERP, which involved non-specific reflection on ERP. Of the remaining 243 ERP; 25% resulted in confidential exit negotiated settlement agreements where teachers or principals resigned with sums of money and other benefits such as references; 2% dismissal with no settlement money; 44% were resolved and relationships retained,

25% remained unresolved and /or escalated and in 4% of cases, families exited the school dissatisfied with outcomes of problems[2].

The next section of this paper presents findings and significant propositions that emerged from analysis of the 243 ERP. Here we discuss empirical evidence of tension at the intersection of workplace conflict management and institutional delivery of dispute resolution in the context of ERP in New Zealand schools.

Legalism versus problem resolution

One complexity of employment relationship problems in education was the nature of parental complaint about the performance or competence of teachers and/or leaders in the school. Our research found ambiguity about appropriate processes for ERP resolution, triggered by complaint. Investigation could, under particular circumstances, lead to escalation and exit-settlement mediation. The following section discusses propositions (in italics) that emerged from themes with ERP stories provided as exemplars.

Investigations of complaints by members of school Boards of Trustees can lead to escalation of problems (Greenwood, 2016, p. 134, proposition 6.26). Anderson (2009) claimed that New Zealand lacked checks and balances on Board of Trustees' (BoT) powers in their relationship with principals, due to parents acting as Board members. For example, in *Marlene Campbell* v *Commissioner of Salford School* the principal (Campbell) sought reinstatement after a protracted legal battle following a finding by the ERA that an investigation into 11 anonymous complaints (about a culture of intimidation and bullying) had resulted in the BoT resigning and the appointment of a statutory manager who dismissed Campbell. The subsequent *de novo* Employment Court decision was that she had been unjustifiably suspended and unjustifiably dismissed. Campbell was offered confidential settlement by the BoT but she refused; however, in the Employment Court, she was awarded $158,000 without reinstatement. The process of one complaint leading to investigation and subsequent escalation of complaints in the school community resulting in dismissal of the employee was a common finding in our research. For example[3]:

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[2] ERP involving mis-conduct or criminal offences were not included in this study

[3] The tables are formatted to report ERP by-parties to the employment relationship/ **the process (in bold)** *the outcome* (in italics) against the ERP story, coded by (ERP participant pseudonym & their role).

Teacher–parents–BoT–principal **Parental complaint about ill-treatment of a child** *Escalated/negotiated confidential teacher exit settlement*	There was a complaint against a teacher's perceived ill-treatment of a student. Through the maelstrom of conflict relationships & [the] complicated raft of legal & social obligations, they rushed for lawyers & an external investigator; & none of it saved it from escalating. They had no education input. It would have been better to have sought dispute resolution advice, problem-solving advice, [or] interest-based advice rather than simply looking to lawyers to get rights-based processes (166, Adele, mediator).

Our research suggested formal investigation triggers rights based processes before informal early interest based ERP resolution can be enacted. Contrary to the aims of the ERA 2000, in practise legal causes of action remain drivers of ERP resolution processes.

There is an association between investigating legal causes of action, insurance and exit negotiations (Greenwood, 2016, p.156 proposition 7.17). The terminology of ERP and direction to informal problem solving for a 'grievance' may be the source of ambiguity for both complainants and respondents. Earlier we noted the former Attorney General signalled a move away from focussing on legal causes of action to problem solving (p.4). On one hand, a 'grievance' implies blame for an injustice, a rights-based issue where lawyers provide advocacy, risk assessment and case analysis. On the other hand, the term ERP infers interest based matters, more akin to informal problem resolution. There may be ambiguity about appropriate processes in particular circumstances. For example during intra-team, ERP systems and processes for resolving complex relationships are not always clear.

Teacher–teacher **Violence, complex relationships** *Lack of HRM, process mistakes are made*	One teacher was violent towards another teacher. There was union involvement. I conducted a complex investigation. There is a lack of professional HRM persons in schools. The relationships are complex. Schools have difficulty analysing problems & approaching not only the substance of the problem but also getting the process right. … There is incredible complexity in the investigations … schools make process mistakes (143, Adam, academic, mediator, and investigator).
BoT–principal–teacher **Competency** *Exit settlement mediation, legalism, insurance-ism*	There were professional competency complaints. So a principal, & then Board, began to have competency concerns with a teacher. The union was brought in, insurance companies were notified, lawyers were called; there was a mediation. But the relationship was beyond repair by then & it wouldn't have mattered who mediated … no one was going to fix it. Exit settlement at state-sponsored mediation (135, Eron, lawyer, mediator, BoT Chair).

In the New Zealand school sector, insurers were notified. In some circumstances, insurers and lawyers were notified preceding complaint. When notified, lawyers managed

the process. Even a verbal complaint from a teacher of disadvantage, could invoke insurance protection by BoT followed by appointment of lawyers and investigation.

Principal–teacher–insurance companies–BoT **Early adversarial investigation, notification of insurance company** *Negotiated exit settlement*	In a situation where it gets too adversarial too quickly, it may be a lawyer trying to score points … A lawyer said, "*Oh you'd better get your insurance company on deck because it's going to be potentially a personal grievance for disadvantage …*". On the other hand, she had also flagged a possible mediation, so she was keeping open both things & threatening you with the most expensive legal process. … I'd hold out the olive branch of mediation. But unfortunately, by the time it gets to an investigation, there's a polarisation. Unfortunately, a majority of investigations lead to an agreed-upon exit (165, Adam, mediator, academic).

Given the propensity for complaints to escalate to formal dispute bypassing early resolution, participants articulated the process as a culture of exit-settlement.

There is a relationship between complaints and a culture of settlement (Greenwood, 2016, p. 134. proposition 6.25). Principals observed that they had experienced an increase in complaints in the school community. Participants across all data sets said parents actively claimed their right to have a say. Historically schools had the *loco parentis* responsibility where the school took the place of the parent. For parents, this shared parenting role is one of emotional attachment to their children. The inclusion of parents' participation in decisions concerning teachers' employment engages emotion and influences relational trust in the employment relationship. In some ERPs, parental complaint had a negative impact on trust between teachers, principals, parents and BoTs. There were significant examples of parent–teacher and teacher–teacher complaints that led to the end of the employment relationship.

Principal–BoT **Disrespectful dialogue** *Exit settlement negotiation*	You had almost an entire Board & a principal around a table & the mediator allowing the Board members to heckle the principal while he/she was trying to speak. The state mediator failed to intervene when people constantly interrupted. The principal didn't want the exit package that eventuated—it wasn't about that, it was staying on & doing the job. And the problem for principals who exit that way is: How do they get another job? You know, if a principal is, let's say, aged 50 plus, it's a real serious problem. Settled by exit negotiation (137, Eron, lawyer, ADR mediator, BoT Chair).

Parents–teacher–team leader–principal **Parental complaints - disrespectful treatment of a child** *Racist rhetoric from parental emails—principal avoided problem, teacher resigned*	I had many issues with a staff member & parents who had some legitimate concerns about a teacher … I didn't have any issues with her competence but the complaints were about performance, timeliness, as well as her abrasive relationship with children. She had lots of time off; but the racism, disgusting rhetoric [&] emails from parents to the principal escalated the problem. But there are high parental expectations … & she put in [the] bare minimum of effort; trust was low it was really hard. A school like ours is a high-performance school, you have to be fully committed to your job, otherwise you don't last. The teacher left [with] no notice to go to another job … She didn't even say goodbye, she just left, boom, two days after parent meetings where she had asked me to come support her cause. … .(1, Martin, team leader).

Employment relationships in education are complex and principals' reported difficulty-managing complaints. Some were fearful of balancing the 'rights' of the teacher with the 'interests' of the children. In the exemplar below, the complaint remained unresolved for two years. Families left the school and the issues remained unresolved when the principal left the school.

Teacher–parents–principal **Parental complaint disrespectful treatment of a child** *Avoidance of managing the dispute*	I find the stand-off between "he said/she said" (between parents & teachers) quite hard …Well, I don't know what it is that makes me kind of hesitant to say … this but, I mean, I can think of one example maybe more … if I kind of dig deeper about that teacher's behaviour, one example … [pause] I did see her [the teacher] move the head of the child (48). The Board has had two complaints in writing but there are also some other issues around parents' perceptions of her teaching & her leadership (50, Anita, principal).

The paradigm shift from rights- to interest-based problem solving may not have been fully realised in the education sector. According to a former MBIE mediator, this may be a matter of unrealised skills and expertise.

Teacher–teacher **Written formal complaint = problem escalation** *Schools have the skills but early assistance failed*	It is becoming common to receive formal complaints between staff members over an informal relationship issue, complaints about performance & competence between teachers. A written complaint is usually what people mean when they use the term 'formal complaint'—it might be an email. And that's the point where a lot of school managers, principals & BoTs decide that they are out of their area of competence. I don't think they are. But they decide they're not up to it. … when there's been a formal letter of complaint… the drama has built up … the conflict has built up …yet teachers are natural problem solvers (153, Sarah, mediator).

The ERA 2000 aimed for open communication in all aspects of the employment relationship to build mutual trust, but complaint negatively affects trust. In the *Lewis* case, formal complaint and subsequent investigation failed to surface a range of differing needs, interests and perspectives involved in the exchanges between Mr Lewis and Mrs R.

The significant complaint by Mrs R was that she was 'over-ruled' by Mr Lewis that she defined as bullying and harassment. The Court said if the Board had investigated the allegation appropriately, it would have obtained evidence from a colleague of both Mr Lewis and Mrs R which would have led to the conclusion that Mr Lewis along with other staff members had raised appropriate professional concerns about course content, assessment and moderation and were justified in doing so. Mrs R may not have liked the outcomes but this was not harassment and bullying (Hannan, 2012, p.64).

Hannan's observation above identified the importance of exploring different interpretations of ERP when they emerge. He said the issues were misinterpreted and escalation related to the investigation processes. In our research a principal drew our attention to the role of exploring interpretations and 'sense-making' in organisations when she said; *"I need to make sense of an accusation of bullying by talking"* (Anita).

Sense-making Literature

The social psychology of sense-making in organisations is theorised as a response to ambiguity, uncertainty and change (Weick, 2001, 2009). This section makes an analogy between sense-making, cognitive dissonance and Mezirow's (1994) notion of a disorienting dilemma, asserting that conflict and dispute resolution can be conceptualised as relational sense-making. According to Festinger (1957), constructing a new sense of situations involved reframing thinking to reduce dissonance. Thomas (1992) called conversations with people, who are not involved with a particular situation, third party sensemaking. Sense-making according to Weick (2009, p.143), is a cognitive process reliant on talk; his famous statement "how can I know what I think until I see what I say", illustrates sense-making as a speaking-listening-thinking process. Volkema, Farquhar and Bergmann (1996) identified that third party sensemaking, occurs in situations of change

and ill structured problems like workplace conflict, involved third party sense-making as people looked to others to help them make sense of situations. According to Miller and Jablin (1991), people engage in third party sense-making to seek validation, clarification and comfort in new circumstances.

Weick et al. (2005, p.419), claimed sense-making influences identity construction. Weick et al. (2005, p.419) said sense-making was a series of "micro-level actions … but they are small actions with large consequences". Sense-making as an ongoing process involved seven dimensions (Weick 1995) which "represent the situation that is present at moments of sensemaking." (Weick, 2010b, p. 544). Sense-making is a *social* phenomenon involving social context, where *identity* construction is grounded in who we are, what has shaped our lives and influenced the way we see the world. Sense-making is *retrospective*, because we rely on past events to help us interpret current events, comparing and selecting the *cues* and elements that support our beliefs and interpretations. Weick (1995) argued the *ongoing* process was sequential and never ending.

Olson-Buchanan and Boswell (2008) presented a sense-making model of experiencing and voicing mistreatment at work. They identified the reflexive, recursive, cumulative nature of sense-making during responses to mistreatment and recommended longitudinal research on the triggers for emergence of sense-making mistreatment to inform the conflict management systems. Weick (2010b) argued people are engaged in ongoing sense-making enacting decisions that both respond to and create the environment of the organisation, where 'awareness' of anomaly creates struggle in crisis situations.

The assertions emerged from Weick's (1988; 1993) analysis of crisis decision-making. Weick (1979, 1988; 1989, 1993, 1995) and Weick et al. (2005) maintained that decision-making was anchored in identity as people searched for meaning. A threat to identity

included actions that failed to confirm self-concept. He asserted that sense-making was influenced by efforts to maintain a positive self-concept, claiming that when people act on what seems *plausible*, they might forget to consider alternative possibilities, which (in their accident and disaster research) have "large consequences" (Weick et al., 2005, p.149). Multiple examples of sense-making in complex ERP had '*large*' unjust '*consequences*' for employment relationships. In the ERP below, the mediated exit, settlements decided before generation of a range of options had negative consequences for teachers' careers. For example:

Teacher–union–parents–Board Chair **Parental complaints** *Performance/competency—exit negotiations*	Six parents came to complain … We had a meeting about reports because they thought they weren't accurate & they didn't know where their children were at. We were moving down to competency & when six came in, and the Board Chair (who is a lawyer) had a word to the union & said, "*Look, this is going to go really badly. Can we come to some sort of mediated agreement … this is what we're prepared to offer*". …Everybody saved face; everybody had dignity. That's what it's about. The psych of a teacher is they want to do a good job, they want to teach, they care about kids, but sometimes they just don't have skills to be able to do it & [the] skills have got more & more complex (42, Peter, principal).
Parent–teacher **Parental complaint** **Disrespecting a child, poor performance or misconduct?** *Investigation, teacher exit*	A child stepped on a piece of equipment & the teacher abused the child saying he/she is 'hopeless & useless'. An investigation found that's a poor way to teach. I think that's poor performance, but abusing the kid for stepping on the equipment could also be misconduct. We did not agree on whichever it was. I can't give you a clear, bright line between a concept of poor performance but it resulted in a bad outcome, & misconduct resulted in a very bad outcome; investigation and exit settlement but the cause it was the same thing (144, Adam, mediator, academic, investigator).

The rational approach to making timely plausible decisions about complaints above, failed to take into account opportunities for change and learning on the part of the teacher's parents and the schools. According to Conway and Briner (2005), Weick's (1995) construct of 'plausibility' is the notion that the post-modern world is made up of multiple identities, multiple realities, ambiguous and changing contexts. Conway and Briner (2005, p.150) identify that "the search for accuracy becomes a futile pursuit; hence, the actor needs to act pragmatically, not necessarily rationally", settling for plausibility. Making

sense of ambiguity and complexity is an important consideration when analysing conflict in the workplace. The value of taking a sense-making lens to ERP resolution was identified in situations where early collaborative reflective conversations led to ERP resolution close to the workplace.

Collaborative reflective sense-making

Early attention to collaborative sense-making builds trust and demonstrates acceptance of different conceptualisations of problems to be resolved, potentially building capacity in collaborative conflict resolution across the whole school community. (Greenwood, 2016, p115. Proposition 5.25). Our analysis of ERP surfaced a range of sense-making processes that contributed to early resolution of conflict. Conversations in which parties engaged in assumption checking and open communication were explicit processes for building a culture of respectful dialogue. Applying a process of 'interrupting the ladder of inference' (Senge et al., 2000) during conversation was effective for exploring assumptions made by parties. Likewise, problems with conducting teachers' performance appraisals were resolved by attending training in Robinson's (2011) open-to-learning conversations. Interestingly, collaborative reflective sense-making mirrors some mediation approaches. For example, aspects of storytelling specific to narrative mediation (Winslade & Monk, 2008) and acknowledgement and recognition aligned with transformative mediation (Bush & Folger, 1994, 2004, 2005) enhanced problem transformation, and new understandings helped facilitate ERP resolution.

Some of our participants had experimented with the reframing of the process of complaint to 'suggestions for improvement' or experimented with 'dialogic discourse' (Bakhtin, 1981), 'open-to-learning conversations' (Robinson, 2011) and a process referred to as 'mediated conversations' where peers took turns to facilitate joint meetings between staff in conflict. Several leaders were attempting to embed respectful dialogue and assumption checking throughout the organisational culture as a tool for conflict management to prevent escalation. A range of sense-making approaches successfully resolved ERP. For example:

Teacher–teacher **Disrespectful dialogue** *Mental models/respectful conversation*	A parent complained … that a staff member was not showing respect. The teacher was heard yelling at a colleague in front of children. This was resolved by assumption checking & a difficult conversation with the teacher about different mental models & modelling elements of respectful communication (9, Lisa, principal).

Teacher–principal **Aggrieved re unsuccessful promotion application** *Reflective talking document*	Sometimes a staff member can feel really aggrieved by something. One example might be that two teachers go for the same job in a senior role & one ends up not getting it. So you have to have empathy for them & really work with that person. One staff member wrote me a letter & said, "*I feel this, this, & this*". They said they couldn't talk about it, so we sat down; I had the letter in front of me for the purposes of reflective coaching. It was a talking document & the teacher remained on the staff (12, Lisa, principal).
Teachers–principal–parents **Parents complaining** *Looking at the problem from different perspectives—perspective checking*	Parents are quite hard on teachers … —there are always complaints bouncing around about teaching, curriculum, National Standards, policies, rules & treatment of children. I hold a meeting using a technique I was taught at Harvard in '05. I said, "*I'll meet with you but don't think that I feel comfortable about you attacking my staff.*" I name the behaviour, refrain from attacking. We sit at a round table & I get out a big number 3 & say, "*From various angles, we see different things (M 3 E)*". We look at the problem from all of the perspectives & it usually resolves (21, Lisa, principal).
Senior team leader–teacher **Negative style & tone in conversation** *Mediation, listening, reframing recognition acknowledgement*	Both parties used a negative style & tone in conversations: "*She's telling lies; he's such a bully; he's so demanding; she's so unreasonable; she won't let me do this; he won't cooperate with us.*" This was resolved by mediation, using reframing, listening, recognition & acknowledgement of different thinking about the issues (129, Adele, mediator).
Team leader–teacher **Angry verbal exchanges about nasty notes** *Mediation resolved issue & built communication awareness*	There were high levels of angry verbal exchanges: "*She doesn't need to know every time I go to the toilet; there is retribution through nasty notes*". There had been shifts in power, changes in roles, a male had managed [the] female; now the female was managing the same male. This was resolved by exploring awareness of communication styles during mediation (130, Adele, mediator).
Team leader–teacher **Lack of communication awareness, terrible relationships** *Mediation communication awareness*	"*I'm having difficulty getting this person to do what I want & this person has got a terrible relationship with others.*" The problem involved a lack of awareness, … on the teacher's part, … oblivious to the impact of their communication behaviour on other people. This was resolved by talking with the parties confidentially in the workplace (149, Raife, mediator).
Team leader–teacher **Feeling undervalued** *Early workplace mediation, recognition & acknowledgement*	People feel that they're not valued & leaders say … the teachers are just trying to get time or money out of me, … if you let that go very quickly we have it escalated to a personal grievance. The leader tells the mediator, "*This person has been into me & feels undervalued*". … I talk to the teacher & she's been feeling undervalued. It's got nothing to do with pay or time; it's about a lack of awareness & trying to educate leaders into recognising that … people tend to be multi-taskers so they are putting in a huge number of different skills that need to be recognised & acknowledged. [This was] resolved on-site by early workplace mediation (150, Raife, mediator).
Team leader–parent **Intimidating parental behaviour** *Face-to-face conversation relationship building*	A … parent was intimidating/bullying young teachers by taking over the classroom. I intervened … invited her in to be a part of ongoing learning in my classroom. We built a relationship through face-to-face conversation. I always approach & try to de-escalate. She was parenting alone & very motivated for her children to do well. It strengthened the relationship. The kids are happy, I admire their mum, now she is great support in the classroom (2, Martin, team leader).

Acting Principal–BoT/combative parents **Combative parental complaints—bullying** *Open inquiry, acknowledgement, collaborative conflict management*	Parents came in to sort out child bullying issues & they were in quite a combative mood. The acting principal was fabulous & very open; he said, *"Look, I can't begin to understand how you must feel but how can we help, what can we do, this is what we have already done, … you tell us what you want"*. He was very open & he had an openness about his own vulnerability. He said *"Look, I'm not quite sure what's going on … I think this is what's happening, but ..."* He was fabulous & it was done in a way that the whole tension in the room deflated like a balloon (114, Maggie, Parent, BoT, lawyer).

The common theme of change from combat negative tone to open communication in the stories above suggests there is potential for transformation of ERP at the level of the workplace. A collaborative philosophy for the whole school community is one aspect of the sixth disciplines associated with schools as learning organisations advocated by Senge et al. (2000), where alignment between vision and collaboration was key to the school acting as a *learning organisation*. Robinson's (2011), *open-to-learning* conversations undertaken by some leaders, reflected principles of Interest Based Negotiation, (IBN) (Fisher, Ury and Patton, 1991) and *reflective learning* (Kolb, 1984; Gibbs, 1988). The processes required mindful examination of assumptions, and emotions as well as exploration of different ways of thinking or perspectives on ERP. There was an association between sense-making processes and learning.

In so-called high-performance, high decile schools, performance reviews influenced by parental complaint and feedback required training and support. One school had found *Training in difficult conversations and mediation meetings are necessary in schools that intend to operate in collaborative spaces such as the hubs in open-classroom schools* (8.15). The school had been undergoing professional development to embed collaborative conversations and IBN throughout the school. In that school, problem resolution was not the sole role of the leaders or the principal. Building trust was to be explicit in the culture and practices of all members of staff. This is significant for schools, because according to Bryk and Schneider (2002), there is a positive correlation between student success and trusting relationships among the adults engaged in the school community. They found that relational trust was forged through daily social exchanges and the interplay between respect, competence, personal regard for others and integrity. This confirms the proposition that *leaders who recognise trust is an outcome of effective, quality relationships build capacity for handling problems and complaints* (Greenwood, p.114, proposition 5.22). Maree a principal said it was important to embed collaborative sense-making throughout the school: "The four vision principles—building learning capacity,

collaborating, making meaning, and breakthrough to solve problems. These are clearly articulated by the leadership team and supported by parents, teachers, and children at all levels of the organisation". On the other hand, we have discovered employment relationship problems (ERP) where complaint and loss of trust ended employment relationships. Maree believed the schools collaborative approach to reflective learning and problem resolution built trust in all relationships across the school community and that had a positive effect on childrens' learning and teacher job satisfaction. Framing conflict as an opportunity for positive change, transformation and increased awareness is common in ADR literature (Bingham,, 1997, 2004, 2007, 2012, Amsler 2014; Bowling & Hoffman, 2003; Bush & Folger, 1994, 2004, 2005; Cloke, 2001; 2006; Cloke & Goldsmith, 2000b; Jameson, 2001; Winslade & Monk, 2008; Costantino & Merchant, 1996; Donais, 2006; Ury et al., 1991). Internationally workplace conflict management has changed over time and transformative approaches to mediating relationships at the USPS positively influenced outcomes of dispute resolution (Amsler 2014; Bingham, 2007). In New Zealand, we require greater depth of understanding about the nature of ERP resolution at the level of the workplace under the ERA 2000.

Conclusions

This paper identified and discussed the contemporary shift to individual ERP resolution in New Zealand. The site of investigation has been at the intersection of institutional provision of mediation and workplace conflict management in schools. We have found ERP resolution by broadly defined mediation, under current legislation, permits unjust exit settlement in Education. The consistent finding that complaints followed by formal investigation triggered escalation led to us to search for a body of literature that explained process ambiguity. We found sense-making literature. We argue that the legislative direction to facilitative approaches were not favoured over legalistic options when leaders, governors and professionals were faced with making sense of, and deciding on, contentious complaints about teachers.

The participants reporting ERP episodes in this research were not generally vulnerable scale A teachers nor teachers on short-term contracts. One significant story reported by a scale A teacher was about bullying and discrimination by ethnicity. Unjustified disadvantage and confidential exit settlement followed two years of protracted dispute and retirement. The lack of voice from a large sample of scale A teachers is a limitation of the research. The omission was due to the ethical risk of harm by interviewing

employees about ERP, while employed in organisations where they experienced the ERP. Given the inherent power imbalance in the employment relationship this is an ingoing challenge for ERP research to explore in future.

There appears to be a lack of policy co-ordination across institutional services for complaint, regulation and dispute resolution in the primary education sector. Above all, we have observed that a collaborative philosophy of respectful good faith dialogue in the workplace may protect the integrity of employment relationships and outcomes of the dispute resolution process. The notion of embedding collaborative sense-making conversations as a tool for workplace conflict management has emerged from our comparison of ERP processes that resolved early at the level of the organisation with those that escalated or ended. We are currently developing a model of collaborative conflict management to test in organisations. We wish to examine outcomes of neutral confidential sense-making conversations preceding institutional ERP resolution or formal investigation of complaints. We have highlighted an association between managing an ERP and making sense of the core issues and appropriate processes for conflict management.

Future longitudinal research is also required. Such research may involve training and development of reflective sense-making and IBN for conflict management in organisations with evaluation research instigated at intervals during an ERP process. In the future, we will examine the complexity of escalation, avoidance, triggers of escalated ERP and workplace strategies for resolution. The complex dynamic, relationship between trust and ERP resolution also demands future research.

Overall, it is disappointing to report that at the intersection of workplace conflict management and state provision of mediation as the primary mechanism for resolution of 'employment relationship problems' (ERP) fair outcomes are yet to be fully realised in the primary education sector of Aotearoa New Zealand.

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