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Grievance Processes: Research, Rhetoric and Directions for New Zealand

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Abstract

Individual-level conflict is a central aspect of contemporary employment relations. The literature is somewhat fragmented, focusing on certain aspects of grievances and dominated by North American writing. The implications for New Zealand are explored and compared with local research which has been driven largely by policy and operational needs. At a time when political debate over grievance laws is once again intensifying, three main areas emerge as priorities for future New Zealand research: a focus on the decision-making processes of employers and employees; what happens in the early stages of within-company resolution; and the merits of alternative dispute resolution procedures.

Introduction

This article provides an overview of the literature concerning employment grievances, relating this to the New Zealand setting and defining an agenda for further research. In the process we point to the disconnection in New Zealand between the political lobbying and the shortage of evidence-based findings. Given the breadth of this topic however, we have selected the most salient areas for discussion. Individual-level outcomes are explored, but not organisational-level outcomes such as productivity and organisational performance where there are fewer clearly established findings. We also give only brief coverage to post-settlement employment as this is less common in this country. The timeframe of the discussion covers research from the mid-1980s, since earlier literature was less well developed (Bemmels and Foley, 1996), while the radical changes affecting both the internal and external contexts of organisations mean that earlier findings may no longer be relevant (Kaminski, 1999; Lipsky, Seeber and Fincher, 2003).

Individual-level conflict is a central aspect of modern employment relations. Recent decades have seen marked increases in the volume of formal, individual-level employment disputes across countries. The USA has experienced a “litigation explosion” of discrimination complaints and lawsuits (Lipsky et al., 2003: 54), with wrongful discharge litigation becoming one of the nation’s premier growth industries (Feuille and Delaney, 1992: 201). Similarly, in the UK the number of employment tribunal applications more than trebled between 1988 and 1996 (Burgess, Propper and Wilson, 2001), a pattern mirrored in New Zealand with a major increase in personal grievance claims during the 1990s (May, Walsh, Thickett and Harbridge, 2001). Some writers

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suggest that individual-level disputes may now represent a more accurate indicator of organisational conflict than traditional collective action (Knight and Latreille, 2000).

The handling of individual-level disputes involves balancing justice for both sides, providing suitable protections for employees while at the same time supporting the functioning of organisations. It is also highly politicised. The New Zealand debate involves lobbying from employer groups and unions, and in recent years the issue has attracted media attention with employer allegations that the current system serves as a “gravy train” (EMA Northern, 2006a; 2009b). The recently elected National-led government introduced a 90 day probationary period restricting entitlement to grievance protections from early 2009, and has announced its intention to further review personal grievance procedures, intimating the likelihood of further legislative change as a response to employer criticisms.

Background and Context

The term “grievance” is defined as “a mechanism for aggrieved employees to protest and seek redress from some aspect of their employment situation” (Feuille and Delaney, 1992: 189). Any discussion needs to acknowledge the significant differences across countries in terms of legal provisions, structures and systems. One approach, exemplified by the United Kingdom, Australia and New Zealand, follows European countries by developing extensive statutory individual-rights protections, with enforcement and dispute resolution through national labour courts or employment tribunals.

In contrast, North America places the onus on employers to resolve disputes and there has developed a long-standing division between union and non-union situations. Hence, there are two distinct grievance systems, each with extensive literatures. Union settings involve formal, multi-step grievance procedures which typically culminate in arbitration by a neutral third-party. A grievance in this context is usually a claim by an employee or the union that the employer has violated the contract (Feuille and Hildebrand, 1995, p.344). Non-union settings have evolved from a situation with few protections for employees, to the recent widespread adoption of dispute resolution systems. Among these however, there is considerable diversity in terms of scope and complexity, with differing procedures and protections. Unlike traditional union procedures, non-union systems use a range of alternative dispute resolution (ADR) options, including open-door systems, early neutral assessment, review panels, mediation and arbitration (Bingham, 2004: 145; Feuille and Delaney, 1992).

The term “employment dispute resolution” (EDR) typically refers to the use of a third-party such as an ombuds (person), mediation, or arbitration to resolve employment disputes outside a collectively bargained grievance procedure (Bingham and Chachere, 1999: 95). Initially, non-union provisions performed a similar role to union grievance procedures, dealing mainly with contractual violations and violations of organisations’ own policies. Now however, North American EDR, using employer-based or third-party programmes extends to systems which go as far as to substitute for the statutory remedies usually available through the courts and government agencies (Bingham and Chachere, 1999). These types of EDR systems can exist both in non-union workplaces, as well as in union settings where they operate alongside union

grievance procedures. Although the latter, more extreme forms are not "grievances" as typically understood, the processes do nonetheless have many commonalities with, and relevance for, grievance research.

The New Zealand system offers a significant contrast to North American systems where employment-at-will, that is, employment being immediately terminable without recourse, forms the legal setting for most private sector employees. The New Zealand grievance process is based on statutory protections rather than employment contracts, with legislated systems for handling individual-level disputes including the forums of the Employment Relations Authority and the courts. At the same time though, New Zealand does participate in the broader international pattern of decentralising dispute resolution to the workplace level, and uses ADR with state-sponsored mediation.

The Grievance Literature

There is no "complete theory" of individual-level employment dispute processes which Bemmels and Foley (1996) suggest is a reflection of the nature of the phenomena. Research into grievance procedures is complicated firstly by the variety of forms that these can take. Moreover any grievance process will involve a sequence of different steps with many differing individuals involved as the dispute progresses, moving from first-line local staff to more senior staff and external representatives as the dispute progresses. Given this complexity, Bemmels and Foley (1996) propose that any all-embracing theory would be "incomprehensible", and instead it is more appropriate to develop theoretical explanations for different phases. This is reflected in the existing literature which tends to be fragmented, dealing with separate aspects of the overall process.

In comparison with the international literature, New Zealand research has often been instigated by the Department of Labour and hence driven by policy and operational needs. Recent reports have included a diverse range of approaches including surveys of employers and employees (Department of Labour, 2000, 2002c, 2007d), interviews with parties (Department of Labour, 2002c, 2007d), a brief "snapshot" analysis of mediations (Department of Labour, 2007c) and Authority determinations (Department of Labour, 2007b), as well as focus groups (Department of Labour, 2002c, 2007a). A number of common themes emerged from these publications. The reports outlined the incidence of employment relationship problems and the associated financial, personal and social costs. The various avenues of resolution were identified, and the issue of representation was discussed with regard to issues of quality and the effect that this had on resolution processes. The situation for small and medium enterprises was portrayed as particularly difficult, as these were typically over-represented in the numbers of employment relationship problems, with those problems having a disproportionately large impact on such organisations. While these reports cover a variety of issues, they are often limited by methodological factors including sample size and response rates, and consequently the reports themselves state that their "findings can only be indicative" (Department of Labour, 2007d: 5; 2007b).[1]

The following discussion is structured around the four sequential phases of the grievance process: (1) the incidence of grievable events; (2) grievance initiation; (3) grievance processing; and finally (4) outcomes.

1. Incidence of Grievances

The emergence of a grievance contains a number of sub-stages. The process commences with the initial perception that a 'grievable event', a mistreatment or breach of employee rights, has occurred. Surprisingly, the literature contains little information on these events although a number of studies have suggested that their incidence is high (Bemmels and Foley, 1996; Department of Trade and Industry (DTI), 2005a, 2005b; Lewin, 1999; Lewin and Peterson, 1988). Of significance is the apparent drop-off between the large numbers of potential events and the much smaller number actually pursued as grievances. The next sub-stage consists of initial, informal complaints and their resolution directly between the parties. USA research suggests most grievances are never put in writing but instead are dealt with informally between workers and their supervisors (Lewin, 1999). Again, the incidence of this resolution is not known, but it is estimated that in union firms there are about 10 unwritten grievances for every one filed formally (Lewin and Peterson, 1988).

In the next sub-stage, actual formal filing, data for non-union North American settings comes from company records. The definition of what constitutes a grievance varies by company, but overall studies suggest an average annual rate of around five grievances per hundred employees (Lewin, 2004). In contrast, the union filing rate is around 10%, twice that of non-union organisations (Bemmels, 1994; Lewin, 2004; Lewin and Peterson, 1988). By comparison, United Kingdom data is drawn from applications to an external forum, the Employment Tribunal, rather than in-house grievance procedures and there the annual rate was 1.9 per thousand (approximately 2%) of employees (Knight and Latreille, 2000). Beyond these aggregated figures, American, British, Canadian and other studies report wide variation in grievance rates across industries or sectors (Bemmels and Foley, 1996; Earnshaw, Goodman, Harrison and Marchington, 1998; Hayward, Peters, Rosseau and Seeds, 2004; Lewin and Peterson, 1988), a pattern that is mirrored in New Zealand (Department of Labour, 2003b). Overall, little is known about the causes of these variations.

International between-country comparisons are problematic, with the New Zealand situation further compounded by both the limited data and the use of measures not directly comparable with American grievances. New Zealand surveys suggest that in a 12 month period, around 35% of employees experienced a 'problem' that was discussed with a supervisor or manager (Department of Labour, 2000), while estimates of issues that are not resolved by discussion with a immediate manager or supervisor but proceed to third party involvement range from 1.5% to 15%, with a higher incidence in the private sector (Department of Labour, 2000, 2003b, 2007d). While absolute numbers are not directly comparable, the limited research does suggest a similar pattern to elsewhere, with high levels of informal or private resolution and only a small proportion proceeding to the formal institutions (Department of Labour, 2002c, 2007a). Interestingly, in terms of the contemporary debates, one recent report (Department of Labour, 2007d) suggests a low incidence with the majority of New Zealand businesses having no employment relationship problems in the 12 months surveyed, whereas in contrast an employer-

group survey proposed that 30% of employers experienced a grievance over a similar period (EMA Northern, 2006b).

2. *Grievance Initiation*

(a) Demographics

Early grievance research assumed that filing behaviour may be explained by demographic factors or personal disposition. Subsequent studies however, failed to produce any correspondingly simple answers; the findings varied and the studies tended to describe what occurred rather than developing specific theory that could explain differences (Allen and Keaveny, 1985; Bacharach and Bamberger, 2004; Lewin, 1987; Lewin and Peterson, 1988). The matter is further compounded with the relationships also varying by grievance issue (Bemmels and Foley, 1996; Lewin, 2004; Lewin and Peterson, 1988). New Zealand data covers a range of factors such as age, tenure, ethnicity, union membership, and sector, however as findings vary both within countries and between countries, there are no clear reference points for making inter-country comparisons (Department of Labour, 2000, 2007c).

(b) Context of Work

Other studies explored the link between grievance filing, the work context and possible work-related determinants. More aversive supervision or job characteristics for example, were expected to result in increased grievance filing (Bamberger, Kohn and Nahum-Shani, 2008; Klaas, 1989a). Despite the intuitive appeal of such links, once again empirical studies generated inconsistent findings (Bacharach and Bamberger, 2004; Bemmels, 1994; Bemmels and Foley, 1996; Bemmels, Reshef and Stratton-Devine, 1991). The roles of unions and management have however proven significant. Management policies requiring written applications for example, have been associated with increased grievance rates, heightened formality and escalation of disputes (Antcliff and Saundry, 2009; Gibbons, 2007; Lewin and Peterson, 1988). Union policies of 'taking certain grievances through the procedure', along with stewards' encouragement of filing, were also related to increased grievance filing (Bemmels and Foley, 1996). In contrast, perceived supervisor capabilities, and shop steward attempts at informal resolution, were both negatively associated with grievance rates (Bemmels, 1994; Bemmels and Foley, 1996; Bemmels et al., 1991).

There is little New Zealand data to directly compare these findings with, however the international research does highlight the critical nature of the roles of management and unions and this has significant implications for both New Zealand practice and research. Existing reports note issues such as the key functions unions can perform assisting with resolving issues in the workplace, as well as the effects of the varying levels of ability among managers (Department of Labour, 2002c; Donald, 1999). Walker (2009) also observed the influence that different approaches from employers and representatives have on the course of grievances, creating types of interactions that move the dispute towards either escalation or resolution.

(c) Employee Decision-Making
A different line of inquiry has explored the process of employee decision-making; how do employees decide for example, whether or not to file a grievance. Unlike the earlier, more descriptive work, decision-making models typically involve the application of specific social science theory. Several of these models are outlined in terms of their potential relevance for the New Zealand situation.

Of particular significance is Klaas' (1989a) model based on expectancy, procedural and distributive justice theories. This proposes a "rational, calculative" decision-making process where, in terms of expectancy theory, employees weigh up the relative attractiveness or utility of filing, taking into account factors such as the likelihood of winning and expected remedies, comparing these against alternatives such as quitting or inaction. Employees motivated by a genuine sense of inequity are likely to engage in additional "alternative responses" such as disruptive behaviour if grievance procedures on their own do not restore equity - whereas those filing for purely instrumental reasons of political or economic gain, are less likely to do this. Subsequent empirical investigations have supported this model (Lewin, 2004; Olson-Buchanan, 1997).

Cappelli and Chauvin (1991) developed an "efficiency model" which also proposed that employees will weigh up the costs and benefits (or effectiveness) of grievance filing compared with other options such as exit or remaining silent. In particular, labour market conditions such as high unemployment, and higher wage premiums (compared to the local labour market), were identified as key determinants of the benefits of filing. This was consistent with the findings of Brown, Frick and Sessions (1997) whose 30-year data from Germany and Britain showed the demand for grievances to be cyclical, with macro-level factors such as unemployment and vacancy rates exerting a much stronger influence than changes in the legal infrastructure. Bacharach and Bamberger (2004) however, found little support for the direct relationship with unemployment or wage premiums. Instead they returned to a more traditional issue of the relative power of the parties. Drawing on power dependence theory (Lawler, 1992), they proposed the more conceptual notion of "labour power", meaning the employee's perception of the extent to which the employer is dependent on the employee, as a key determinant of employees' filing decisions.

More recently Olson-Buchanan and Boswell (2008) proposed a model which seeks to unify earlier work regarding the separate aspects of the dispute process into an integrated theoretical framework. This extends back to the pre-grievance stage, using a sense-making perspective which incorporates individual's perceptions before, during, and after grievance activity, explaining how an individual firstly concludes they have been mistreated, and then responds to this mistreatment.

The Exit-Voice-Loyalty model
Hirschman's (1970) exit-voice-loyalty (EVL) model has been the dominant employee decision making model. Originally developed as a model of consumer behaviour, it proposes that, when confronted by deterioration in a relationship, a party can respond through either "voice" seeking to redress the situation, or "exit" by changing to another product. The individual's loyalty to the

supplier is the key determinant of whether voice or exit behaviour will occur. Freeman and Medoff (1985) adapted the model to industrial relations, proposing that through offering a voice option in the form of grievance procedures, unions produced positive benefits for organisations (Boroff and Lewin, 1997; Lewin, 2005). By having a voice option as an alternative to exit, employers would benefit through reduced turnover, as well as learning about problems more quickly, and gaining more specific information to address the issues. Similarly, employees could also benefit through being able to resolve disputes, restoring their employment relationship and so being able to remain with the company. The traditional wisdom became that voice action, through grievances, was advantageous for both employers and employees (Feuille and Delaney 1992).

Unlike other decision-making models however, the research surrounding Hirschman's (1970) model has not been limited to the initial grievance-filing decision but has extended to other aspects, particularly the proposed beneficial outcomes that are predicted to occur in relation to filing. This has produced unexpected findings which challenge the traditional wisdom. Contrary to those predictions, a series of studies reported negative outcomes following grievance filing and settlement, thus questioning both the traditional wisdom and the adequacy of the EVL model. Comparing employees and supervisors involved in grievances with those who were not, one year after grievance settlement, both performance ratings and promotion rates were lower, and turnover rates were significantly higher, for grievance filers compared to non-filers. No significant differences existed between the filer and non-filer groups prior to, or during, filing and settlement. A similar pattern of outcomes occurred among supervisors involved in those grievances (Lewin, 1987; Lewin, 1999; Lewin and Peterson, 1988; Lewin and Petersen, 1999). So the debate has expanded to encompass competing models which offer alternative explanations for those outcomes. This research will therefore be discussed in relation to those outcomes, below. The area has important implications for not only understanding how employees experience, and respond to, instances of perceived mistreatment, but also possible changes that occur in the employer-employee relationship.

Decision Making Models: Applications and Limitations

While the decision-making approach appears to hold explanatory power, it has limitations. Internationally the work has been tended to be confined to a single decision, namely the initial decision to lodge a grievance, and has not extended to the other decisions throughout the subsequent stages of grievance processes. Furthermore, the work has focused predominantly on the employee perspective with significantly less attention to that of the other key player, the employer. Consequently there are still considerable unexplored areas concerning decision-making in grievance processes. One further potential limitation concerns generalisability, and the question of whether the nature of grievance initiation is the same across differing jurisdictions. In North America for example, it is more typical for grievances to occur with an expectation that the employee will continue their relationship with the same employer. In contrast, New Zealand grievances have tended to occur where the employment relationship has ended, and grievance procedures have often addressed the "terms of dissolution" of such relationships (McAndrew, 2000: 303). There is only limited information concerning grievance initiation decisions in New Zealand and in the absence of such data, it is difficult to assess whether parties are in fact, weighing up the same issues and making the same type of decision.

Although those limitations are acknowledged, it would seem that the area of decision-making, especially by employees, may have considerable potential relevance for New Zealand. The international research suggests that this is an important component in understanding grievance behaviour, yet this aspect of New Zealand grievances still remains ill-defined. The development of grounded findings may provide insights and contrasts for the politicised debate, including issues such as alleged opportunism among employees. Klaas (1989a) for example distinguishes between instrumental and genuine grievance activity, while two New Zealand Department of Labour reports (Department of Labour, 2002c, 2007d) suggest that, at most, only a small minority employees are likely to pursue grievances for purely opportunistic, financial gain – contradicting employer claims.

New Zealand reports have also noted factors that operate in the opposite direction, exerting significant deterrent effects on employee decision-making, particularly the specific social, personal and financial costs experienced by employees (Department of Labour, 2007d). Unlike the international literature the New Zealand information also extends to an outline of elements of employer decision making, in terms of the factors involved, and decision-areas such as the choice of resolution method (Department of Labour, 2007d, 2007a). While the existing information is largely descriptive, Walker (2009) developed a grounded theoretical model of employer and employee decision based on a power dependency framework, as part of a wider grievance process model. This adopts a cost-benefit perspective using elements similar to those noted in Department of Labour reports (Department of Labour, 2007d) but incorporating a sequence of stages as well as noting employer behaviours that are outside the intent of current legislation. It seems that understanding decision-making, particularly from the employee perspective, may be a particularly central element in developing greater knowledge of New Zealand grievance dynamics. Research exploring this area could begin to explain why employee behaviours occur, rather than simply observing overall grievance numbers and making generalisations based on anecdotal evidence.

3. Grievance Processing

Grievance processing refers to "when, where, and how grievances are resolved" (Bemmels and Foley 1996: 372). The inherent focus on the grievance-handling system of a specific country or organisation means that research findings are often interwoven with details of the structures and procedures in a particular locality, thus limiting generalisability. A variety of indicators are used in evaluating grievance processing, but the two main criteria are speed and satisfaction (Budd and Colvin, 2008).

Firstly, the "speed" literature emphasises measures such as the length of time until settlement (Lewin and Peterson, 1988; Ponak and Olson, 1992; Ponak, Zerbe, Rose and Corliss, 1996), the 'level' or step at which settlement occurs, and settlement rates (Dastmalchian and Ng, 1990; Lewin, 1999; Lewin and Peterson, 1988; Ng and Dastmalchian, 1989). In North America for example, the bulk of grievances are typically settled at the first or second steps, with only a very small proportion (around 2%) settled at the final step of either procedure (Feuille, 1999; Lewin, 2004; 2005; Lewin and Peterson, 1988). In New Zealand, reports address aspects such as resolution methods, timeframes associated with each method, costs, and numbers resolved by

each method (Department of Labour, 2007a, 2007c, 2007d). Not surprisingly, in-house resolution generally proves more rapid and less expensive, and as with North America, only a small proportion of cases reach the later stages of the Authority or Employment Court.[2]

Secondly, 'satisfaction' measures typically consider parties' perceptions of procedures, especially their fairness. The organisational justice literature addresses how employees determine if they have been treated fairly, and the impact of those perceptions, with employees who believe they are treated fairly tending to be more favourably disposed toward the organisation (Cohen-Charash and Spector, 2001; Greenberg and Lind, 2000). While much of the grievance processing research is both descriptive and limited by context, the construct of organisational justice with the three aspects of distributive, procedural and interactional justice, provides a theoretical framework with potential to generalise across settings (Colquitt, Conlon, Wesson and Porter, 2001).

Research concerning grievance processes generally confirms the importance of those perceptions of justice or fairness in employees' assessments of the effectiveness of systems (Bemmels and Lau, 2001; Blancero, 1995; Boroff, 1991; Lewin, 1999; Nurse and Devonish, 2007). Fairness can be more important than speed (Gordon and Bowlby, 1989, Lewin, 1999), with perceived procedural justice significantly predicting a belief in overall workplace justice (Fryxell, 1992), as well as being linked to satisfaction with the union and management (Fryxell and Gordon, 1989). Usage of grievance procedures, which can itself be used as a criterion (Bingham, 2004), has also generally been found to be associated with the perceived fairness of the system, with positive employee perceptions of effectiveness related to increased employee use (Lewin and Peterson, 1988; Mesch and Dalton, 1992; Petersen and Lewin, 2000). Blancero and Dyer (1996) for example, report systems that are perceived as 'credible', 'accessible' and 'safe' were used more, while Colvin (2003) suggests the neutrality of decision-makers promotes usage.

New Zealand reports propose relative satisfaction concerning procedures; for example in a recent survey of employers, around two-thirds expressed satisfaction with resolution procedures and outcomes (Department of Labour, 2007d). Contrary to employer claims, the employers surveyed perceived employment relationship problems as resulting in an overall benefit rather than a cost for business, with indications that the direct financial costs for employers were quite low in comparison with countries such as the UK (Department of Labour, 2007d; Gibbons, 2007; Shulruf, Woodhams, Howard, Roopali and Yee, 2009). There is however no consensus on what constitutes "effectiveness" in grievance procedures (Lewin 1999). While there are numerous measures used, there is little clarity on precisely what constitute optimal outcomes. In response, Budd and Colvin (2008) propose the three concepts of 'equity', 'efficiency' and 'voice' as core standards which could be utilised for comparison and evaluation of procedures.

In the North American context, the evaluation of grievance systems takes on particular significance in comparisons of non-union systems utilising ADR processes, against traditional union-based procedures. A key question concerns the extent to which the newer alternative systems provide workplace justice, especially for employees (Bingham, 2004; Colvin, 2003, 2005; Klaas, Mahoney and Wheeler, 2006; Mahony and Klaas, 2008). Traditional systems contain strong procedural safeguards with well-established due process protections, however the few studies that have examined non-union procedures have tended to find fewer protections, with

wide variation in terms of procedural formality and only modest independence from management (Feuille and Delaney 1992; Feuille and Hildebrand 1995). Specific shortcomings are identified for each of the various ADR forms (Budd and Colvin, 2008; Mahony and Klaas, 2008), but Bingham's (2004) review of the existing evidence suggests that mediation produces better organisational outcomes than either no intervention or an adjudicatory option such as arbitration. Other writers however question ADR procedures with Van Gramberg (2001) for example, suggesting a "second class" nature of justice afforded to employees through newer Australian grievance systems.

Questions of equity and justice are not simple matters. In non-union North American settings, grievance systems can be unilaterally designed and imposed by the company, raising crucial questions regarding justice for employees. An especially controversial area concerns the ability of an employer to impose mandatory company-based arbitration as a condition of employment, requiring employees to relinquish their rights to external forums such as the courts, or government agencies. While the New Zealand situation seems far less extreme, there are nonetheless questions concerning the extent to which ADR procedures used in current forums such as Department of Labour mediation, do provide justice for both employees and employers. These international questions also provide a caution for policy-makers considering any possible changes to the New Zealand system. The issues highlight a further, significant research gap concerning within-company resolution in New Zealand. While it seems the majority of disputes are settled privately, and many resolved internally, particularly in larger organisations (Department of Labour, 2007d; EMA Northern, 2006b), from an employee perspective the processes involved may not be prompt or effective, and only 20 - 46% of disputes end with the employee remaining in their job (Department of Labour, 2000, 2003b). Conversely employers also argue that private settlements do not necessarily represent justice but are simply a pragmatic way of avoiding the possibility of high costs associated with forums such as the Authority (Bond, 2004; Department of Labour, 2007d; EMA Northern, 2006b). Although New Zealand legislation requires that companies have a written "plain language explanation" of their resolution procedures, the limited local research questions the extent to which these written procedures translate into systems are in fact, credible, accessible and safe for employees (Blancero and Dyer, 1996; Department of Labour, 2000, 2002c; Walker, 2009). There is a need for further investigation into the processes that do actually occur within New Zealand organisations, before grievances reach external forums, and particularly within-company resolution.

4. Outcomes

Grievance outcomes have been studied over different time intervals, including the longer term implications for employees who remain with the employer post-settlement. In the North American union environment, Feuille and Hildebrand (1995) suggested that most grievances were resolved in the employee's favour. This situation is mirrored in the limited New Zealand information concerning Authority determinations (Department of Labour, 2007b; EMA Northern, 2009a). Feuille and Hildebrand (1995) noted however, that there was no single explanation for why employees prevail in some grievances and not in others, and this is symptomatic of the lack of theoretical development. More broadly, potential determinants that have been investigated include the grievant's work background (Klaas, 1989b), the industrial relations climate of the organisation, the salary of the grievant, the grievance issue (Ng and

Dastmalchian 1989), the nature of the forum (labour versus employment arbitration) (Bingham and Mesch, 2000; Klaas et al., 2006), as well as extraneous factors such as the gender of the grievant and/or decision maker (Bemmels, 1991; Dalton and Todor, 1985; Dalton, Tudor and Owen, 1987). These have shown possible links, and it would seem that in general, factors other than the merits of the case may influence settlement decisions, again raising questions regarding the justice delivered by the system. Firm size is also implicated, and this pattern is especially evident in New Zealand where smaller firms are more likely to be involved in dispute hearings (Department of Labour, 2007d, c); in the UK they are also more likely to lose compared to large firms (Saridakis, Sukanya, Edwards and Storey, 2008). The relationship with organisation size requires further investigation; New Zealand reports suggest that possible explanations may include lesser HR resources and expertise in smaller businesses, along with their lesser experience in dealing with individual-level disputes (Department of Labour, 2007, 2007c).

Representation is another recurrent topic with Antcliff and Saundry (2009) finding no links between actual representation and UK company grievance hearing outcomes, although high union density was linked with more favourable outcomes for employees. In New Zealand, McAndrew (1999) found that in the earlier Employment Tribunal, employers without professional representation were less likely to achieve successful outcomes, while another key predictor of the outcome was the nature of the grievance McAndrew (2000). More recently, reports have noted comparatively high levels of representation in general (Department of Labour, 2003b, 2007b), as well as a positive relationship between representation and settlement outcomes at mediation (Department of Labour, 2007c), however the causes of this are unclear. The influence of representatives is a contentious issue in New Zealand, with employers alleging that "no-win no-fee" contingency representatives inflate grievance rates by pursuing cases that lack merit and are based solely on minor procedural technicalities (EMA Northern, 2006a, 2007). Reports however suggest this type of representative was only involved in a small percentage of problems and did not have a significant influence overall (Department of Labour, 2007d). The varying approaches of different representatives has however been noted (Department of Labour, 2007a, 2007d), including the competency levels, and negative effects of some advocates, as well as the positive roles that others such as unions can play in managing and resolving grievance issues, as mentioned earlier (Department of Labour, 2002c; Donald, 1999), with Walker's (2009) grounded theoretical model addressing the dynamics involving representatives and the effects these have on dispute outcomes.

In general, while many jurisdictions including New Zealand have data concerning outcomes in terms of aspects such as win/lose rates and settlements, these tend to often simply report *what* happens. These however cannot be read at face-value and in isolation; they need to be read in the context of a theoretical framework and an understanding of *why* these occur. A greater understanding of employee decision-making for example, may demonstrate that factors such as costs may mean that employees will only pursue cases with a very high probability of success. This information would therefore imply that one would actually expect a higher proportions of outcomes in favour of employees, rather than assuming that a 50/50 balance of win/lose outcomes is the benchmark for equity. Furthermore, in contexts such as New Zealand it is necessary to be clear about exactly what a system is seeking to achieve and why. If a system is seeking to achieve early, low level resolution, then this needs to be based on a clear theoretical model and outcomes can be measured against those criteria. At the same time, there are hotly

debated issues as to what constitutes a suitable measure of equity and "justice" in both processes and outcome measures. These issues are currently sparking calls for a whole new programme of research into non-union and EDR systems in North America.

Longer-term research on post-settlement issues in North America has found that some employees do experience significant negative outcomes, particularly in areas of performance, promotion attendance and exit, the reverse of what was predicted by the EVL model. These outcomes are however consistent with an alternative model, that of organisational punishment - industrial discipline (Arvey and Jones, 1985; O'Reilly and Weitz, 1980). Therefore one explanation for these negative outcomes is simple 'retaliation', with employees who file grievances and their supervisors, being punished (see Klaas and DeNisi, 1989). Alternatively, there is another possibility; the negative post-settlement outcomes may be due to real behavioural differences, with grievants and their supervisors genuinely being poorer performers. The process of grievance filing and resolution then prompts employers to pay closer attention to their performance, which reveals the performance deficits (Lewin and Petersen, 1999; Olson-Buchanan, 1996).

Studies also suggest that the experience of mistreatment on its own, independent of taking grievance action, is significantly linked to exit (Boswell and Olson-Buchanan, 2004; Olson-Buchanan, 1996). Various other factors appear to be involved. The type of mistreatment or grievance for example, was also influential with 'personal' grievances against supervisors' actions being more strongly linked with lower performance ratings and higher work withdrawal than 'policy-related' issues (Boswell and Olson-Buchanan, 2004; Klaas and De Nisi, 1989). The type of voice also proved influential with loyal employees raising issues but in less formal ways, which could be construed as supporting the EVL model (Olson-Buchanan and Boswell, 2002). Overall however, there is still mixed evidence supporting each of the potential explanations, with no single unequivocal conclusion.

An important implication is that when the grievance process is triggered by deterioration in the relationship between the employee and employer, it would seem that formal grievance activities often do not successfully restore that relationship - irrespective of whether or not the grievance procedures themselves contribute to that decline. This poses questions as to whether formal grievance procedures, perhaps including external mediation, can achieve the resolution and restoration of relationships that is often desired, especially when such interventions only occur after there has been relationship deterioration. In New Zealand, post-settlement outcomes have had less prominence because grievances continue to be dominated by disputed dismissals where relationships have already ended (Department of Labour, 2007b, 2007c). Instead, the question becomes why this occurs, especially when the intent of the current legislation was to promote early intervention, proactively restoring or maintaining employment relationships (Department of Labour, 2002a: 6). Reports have noted for example, that rather than being opportunists, New Zealand employees were in fact, often reluctant to pursue grievances due to concerns about potential retribution, harm to their career, and the likely demise of the employment relationship as an almost-inevitable consequence of a grievance – elements that match overseas retribution interpretations (Department of Labour, 2002c). This also raises the question of how employees deal with perceived mistreatment and whether some issues are not pursued. Similarly, employers may tend to avoid dispute resolution outside the company due to concerns about relationship damage, often perceiving mediation as a "road of last resort" (Department of Labour, 2002c).

Perhaps the smaller size of New Zealand workplaces means that parties are more acutely aware of the potential consequences of grievance action, compared to their North American counterparts. These matters again relate to the issues already noted such as employee decision making and within-company resolution, and thus represent fertile ground for further investigation.

Reinstatement serves as another focus of research. the international literature suggests this is awarded in about half of grievance cases (Lewin, 1999; Williams and Taras, 2000), however there is wide variation in estimates of numbers who subsequently return to work, ranging from 38% to 91% (Eden, 1994; Lewin, 2005; Malinowski, 1981; Williams and Taras, 2000). Canadian and British findings suggest that reinstated employees do not tend to remain with their employers long term (Dickens, Hart and Weekes, 1984; Lewin, 1999; Trudeau, 1991). In contrast, while reinstatement is the "primary" remedy for grievances in New Zealand (ER Act s101(c), s125), in practice it is rarely sought by applicants, a similar situation to Britain (Corby, 2000; Department of Labour, 2002b, 2003a, 2003b). Again, this raises questions regarding the causes of this phenomenon. Are within-company processes perhaps so effective that if resolution is possible, it is normally achieved at that stage – or conversely, are New Zealand employers so unforgiving that embarking on grievance action effectively signals the end of an employment relationship (Department of Labour, 2002c)?

A Research Agenda for New Zealand

The international literature highlights a range of research areas with potential relevance for New Zealand. At the same time, it exposes the limited body of New Zealand research at a time when this is much needed to inform contemporary debates and policy. Internationally, a range of research is needed and this includes the development of models which capture the ongoing dynamic nature of grievance processes involving a progression through a sequence of stages, as well as extending the existing one-sided perspectives to capture the interactive nature of grievances. While the New Zealand shortfalls reflect international patterns to some extent, there are a number of issues of particular local significance which we have identified in the paper. In concluding, our overview is that the most urgent New Zealand needs are centred on three areas[3]. Firstly, there is a shortage of information concerning decision-making, particularly by employees and employers. The factors driving the behaviours of these parties remain ill-defined even though this may be quite a critical issue. There is a need to explore decision-making throughout all stages of the grievance process, from the perspectives of multiple parties. This could include issues such as the alleged prevalence of opportunism, and the numbers of employees who simply decide to exit rather than pursue a dispute.

Accompanying this, the role and influence of third parties in grievances, including representatives and unions, is relatively uncharted. There are indications that these parties are quite influential (McAndrew, 1999; Walker, 2009) but the dynamics are not clearly established. Similarly, the role of HR staff in grievances also warrants investigation, in terms of both their current functions and also their potential to assist in low-level resolution.

A second little-explored area concerns the early stages of grievances, particularly within-company dispute resolution. For example, what actually happens in the early stages, particularly when significant numbers of problems are apparently resolved within organisations and never reach external forums, and yet why do disputed dismissals make up such large proportion of grievances? The 90-day "probation period" also represents a new area requiring thorough investigation. Related to this is the issue of private resolution, concerning grievances that are resolved with the assistance of an external party other than official Department of Labour agents. A third, related area needing research is the introduction of ADR procedures such as mediation with an emphasis on informal confidential resolution. While there are numerous critiques of ADR and 'private' (as opposed to 'public') justice (van Gramberg, 2001), the full implications for grievances have yet to be explored, and these point to the challenging task of evaluating issues of justice and equity in the New Zealand context. Those issues also extend to questions such as access to the higher level forums of the Authority and the Employment Court when critics argue that factors such as costs make these inaccessible for many employees.

Grievances represent an important area of contemporary employment relations. Amidst the current political debates there is a need for research-based evidence in place of rhetoric, however as yet the limited existing local research often provides conflicting results without clear patterns. Internationally, it is well recognised that the field is confronted with major challenges with regard to research access and the design of appropriate methodologies (Bingham, 2005, Bingham and Chachere, 1999, Lewin, 1999). Although these are more pronounced in North America where the employer-centred systems mean that data resides only within the organisation, similar issues remain problematic in a New Zealand context. Nonetheless, an improved understanding of the issues has the potential to benefit employers, employees and policy makers, producing systems that achieve both justice and efficiency.

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Notes

[1] The studies tend to be descriptive rather than driven by theory, and as yet, generally do not have the support of significant amounts of independent academic research.

[2] A Department of Labour (2007d) employer survey suggested that around 60% of employment relationship problems are resolved within the organisation

[3] These areas now form the focus of the author's ongoing research