

Workplace conflict management: legal intentions versus managers' experiences

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Abstract

The Employment Relations Act (ERA) 2000 aims for early resolution of employment relationship problems (ERPs) and good faith behaviour to “build mutual trust and confidence in all aspects of the employment environment”. The policy intentions for problem solving, facilitation and mediation have not been evaluated. Drawing on conflict events and ERPs, this paper investigates relational trust from ongoing PhD research in the primary education sector. These preliminary findings emerged during coding of first order themes from 33 semi-structured interviews. While identifying positive outcomes of conflict and ERPs, participants reported trust was easily damaged and complaints fuelled conflict. On one hand, ERPs were resolved collaboratively; on the other hand, settlement of ERPs by termination and financial exit packages were reported. These findings are discussed in the context of international literature about conflict management.

Introduction

Workplace conflict management could act as a savings account for dispute prevention. Employers and employees both make deposits and withdrawals from the good faith trust account. However, transactions that foster or diminish trust are not clear. School principals believe they manage complex workplace relationships by building and maintaining trust. Our research delves into employment relationship problems in primary schools to investigate how they are managed.

Over the last decade, New Zealand research about the employment relations dispute resolution system has focussed on state-created employment institutions, processes for collective bargaining, rates of grievance handling, the relationship between unions and employers, union density, strikes and lockouts. Academic literature (McAndrew, 2010; Walker & Hamilton, 2010) and state commissioned research (McDermott Miller Limited, 2007; Woodhams, 2007) identified a lack of understanding about workplace resolution of employment relationship problems.

In the institutional setting, aggregated frequencies of disputes have been indicators of workplace conflict in previous literature (Department of Labour, 2002a, b; Waldegrave, Anderson & Wong, 2003). Little is known about the substance and context of ERPs settled during state-funded mediation or resolved in the workplace. The costs and benefits of employer/employee problem resolution have not been measured (Shulruf, Woodham, Howard, Johri & Yee, 2009). Walker and Hamilton (2010) confirmed the need for in-depth analysis of conflict management within organisations because institutional satisfaction surveys painted an incomplete picture. Conducting case study research on mediation, Walker and Hamilton (2010) concluded investigation of organisational culture, values and ways of operating would provide deeper understanding of grievances. Good faith negotiation and early assistance mediation have been enshrined in legislation for over a decade, but a significant gap in conflict management research remains. We do not know what types of conflict and employment

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relationship problems emerge within the workplace nor do we understand how employers manage processes that resolve, escalate or settle conflict, problems and grievances.

This paper reports preliminary insights from PhD research (Greenwood, 2014) which aims to understand what types of conflict and ERPs are experienced, how, and why conflict and ERPs are resolved, settled or escalated. Participants in this project included school principals, leaders in senior management teams, dispute resolution practitioners, members of boards of trustees, education experts and representatives of interest groups. We analysed findings by looking for patterns and connections between conflict, employment relationship problems, dispute resolution processes and outcomes.

The paper begins by outlining the background to conflict management in New Zealand with a focus on the duty to negotiate in good faith and build mutual trust in all aspects of the employment relationship. We link good faith obligations with the conceptualisation of the psychological contract as a conduit for trust in the employment relationship. Examining international conflict management literature, we identify assertions about the growth of alternative dispute resolution (ADR) processes in the workplace and the rise of individualism. In the second section of the paper, we outline the research journey to date. Reporting preliminary findings, we posit a connection between formal complaint and escalation of ERPs. Identifying stories of early resolution by interest-based problem solving, we compare those stories with exit settlement negotiations. In the discussion section, we question the link between confidential exit negotiations and complaints. Connecting emerging propositions to literature, we discuss the significance of building relational trust with particular regard to strengthening the psychological contract.

The New Zealand policy context

The Employment Relations Act (ERA) 2000 signalled a fundamental ideological shift: from the former neo-liberal, ‘free market’ transaction between the employer and employee of the Employment Contracts Act (ECA) 1991 to a relational approach, one of social exchanges (Rasmussen, 2009). The policy goal was to view the employment agreement as more than a contract of service. The employment ‘agreement’ acknowledged the human relationship where people contributed effort and participation in return for formal and informal reward. The ERA required both employers and employees to act in good faith during their day-to-day interactions in order to build relational trust. The obligation of communicating in good faith in the workplace was an attempt to influence negotiation behaviour, normalise conflict and embed open communication during the bargaining of wages, conditions and conflict management processes.

The requirement for good faith behaviour in the ERA 2000 is outlined by the Ministry of Business, Innovation and Employment (MBIE 2013) to mean “in broad terms, that both employers and employees must:

- act honestly, openly, and without hidden or ulterior motives
- raise issues in a fair and timely way
- be constructive and cooperative
- be proactive in providing each other with relevant information and consider all information provided
- respond promptly and thoroughly to reasonable requests and concerns
- keep an open mind, listen to each other and be prepared to change opinion about a particular situation or behaviour, and
- treat each other respectfully”

Good faith behaviour provided a conceptual and pragmatic process framework for communication that aimed to enhance trust and normalise conflict in the employment relationship.

The ERP construct encompasses disputes between an employer and employees; employee, a union and its members; unions in the workplace, unions and employers or employers and other employers during multi-employer bargaining. The language of the Act signposts the intention for resolution close to the workplace at section 101(ab) “to recognise that employment relationship problems are more likely to be resolved quickly and successfully if the problems are first raised and discussed directly between the parties to the relationship”. The language directs parties to early informal processes for resolution. “ERPs were no longer to be defined by reference to the legal causes of action; it was possible to resolve employment relationship conflict before it was defined legally or escalated to a dispute” (Public Policy Academic cited in Greenwood, 2014). Workplace conflict management was to be supported by the state-funded ‘fast, free and fair’ mediation service (Wilson, 2000), to reduce litigation. The free provision of negotiation education and information through a state-funded call centre aimed to enhance productivity by resolving ERPs early, thereby strengthening joint commitment to an ongoing relationship. The legislation stated the innovative goals of building relational trust through good faith behaviour and problem solving relational conflict in its object thus:

- a. 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, and
- b. to promote observance in New Zealand of the principles underlying International Labour Organisation Convention 87 on Freedom of Association, and Convention 98 on the Right to Organise and Bargaining Collective

(Section 3, ERA 2000).

Setting the workplace stage for open communication, good faith negotiation and free accessible mediation without reference to legal causes of action was an ‘innovative’ attempt to enable early resolution of conflict and disputes by mutual agreement. Where possible, it was hoped parties would resolve problems as close as possible to the workplace. However, international conflict management literature has debated the fairness and effectiveness of conflict and dispute resolution processes in the workplace, claiming these processes are symptomatic of the rise of individualism.

International literature on conflict management

This section reviews international literature on early dispute resolution practice and process. The predominant focus has been on whether individualised informal interest based processes disempower unions (Stone, 2002; Lipsky & Seber, 2003). According to Rousseau (2004), there is pressure on organisations to engage in innovative conflict management practices to strengthen relational psychological contracts. The psychological contract is “an individual’s belief in mutual obligations between that person and another party such as between the employee and the employer” (Rosuseau & Tijoriwala, 1998: 679). The conceptualisation of the psychological contract has been debated from March and Simon’s (1958) reference to exchange behaviour; Argyris’s (1960 cited in *ibid*) focus on

an evolving relationship; Levinson, Price, Munden & Solley's (1962) reference to mutual expectations; Kotter's (1973) focus on implicit reciprocity; Schein's (1980) illumination of unwritten expectations; and Rousseau's (1989) application of transactional promissory principles of contract formation. The term, therefore, encompasses the principles of mutual obligation, promise and expectation, often unwritten or implicit. The substance of these principles, or taken for granted assumptions about appropriate conduct in the workplace (Rousseau, 1995; Guest, 2004) rely on the mutual understanding of expectations in order that both parties act in accordance with their psychological contract. Here, we posit that, as parties make sense of their obligations, promises and expectations in the psychological contract, they are in an ongoing complex process of building trust in the employment relationship. Lewicki and Wiethoff (2000) identified that repeated positive expectations of good faith negotiation behaviour and collaborative conflict management built, what they termed, 'calculus-based' trust over time. The idea that calculus-based trust strengthens psychological contracts mirrors the good faith requirements of the ERA 2000. In this paper, we assert that requirement for good faith behaviour embedded in the ERA 2000 provided a process framework for the ongoing negotiation of the psychological contract by directing parties to communicate openly and manage conflict by problem solving. However, international researchers have been less optimistic about the intentions of interest-based conflict management processes.

The design of conflict management policies and systems in organisations has been consistently aligned with individualism, competitive non-union labour market strategies. Osterman (1994) claimed that high performance workplaces supported competitive strategies focussed on innovation and quality hence, organisations were diffusing new conflict management policies to remain competitive. Colvin (2003) reported growth in individualised innovative conflict management practices in North American non-union workplaces that enjoyed the support of employees. Lewin (2004) in the United Kingdom and Roche and Teague (2011) in Ireland suggested a lack of union trust in mutual gains, interest-based approaches to employment negotiation and innovative alternative dispute resolution (ADR), such as mediation.

More recent discussion of ADR by Roche and Teague (2012) suggested international growth of innovative interest-based conflict was shifting to include collective disputes. ADR as an alternative to court litigation encompassed a wide set of procedures for non-unionised workplaces, public sector systems, court affiliated judicial and non-judicial mediation and arbitration, conflict resolution processes for interest based bargaining, collective mediation as well as hybrid mediation-arbitration (med-arb) processes. Roche and Teague (2012) argued that workplace conflict management risked "multiple forms of ADR, or the so-called 'interest based' practices, taking precedent over rights based fall back procedures, such as formal grievance processes" (p.448). In New Zealand, an employment relationship problem (ERP) encompasses grievances. How people have made sense of grievances as problems and whether rights and interests are mutually exclusive is at the heart of the research project which underpins this paper.

Whether ADR at the level of the workplace undermines the power of unions; strengthens commitment and relational trust in the psychological contract between the organisation and individual employees in the workplace is unclear. Roche and Teague (2011) claimed individualism and labour market changes had pulled systems in different directions. They identified a lack of data to provide adequate understanding of how the individualised innovative ADR and traditional collective approaches would coexist and serve the needs of employees in the future. Lewin (2004) had reported that non-union firms adopted a battery of conflict management policies so that employees felt their needs and interests were being catered for by the firm. Colvin (2012: 459) recently asserted the "rise of ADR procedures represents a major, yet 'undertheorized' development in employment relations." So far, research has focussed on the growth in individualised ADR, the reduction in union density and whether or not interest-based processes posed a threat to union bargaining power. Survey research has focused on comparative inquiry about union and non-union workplace grievance procedures, and

interest-based ADR practices compared with traditional formal stepped or positional bargaining procedures (Lewin, 1987; 1999; Fueille, Chatchere & Delaney, 1992; Lipsky & Seber, 2003; Colvin, 2003; Cutcher-Gershenfeld & Kochan, 2007; Roche & Teague, 2011). More recently, there has been a call for “more sharpened research” into the shift to individual employment rights cases (Roche & Teague, 2012: 457). The need for research in the following areas was also identified; formalisation of legal processes, such as legal representation in mediation, increased costs of tribunals, the impact of employment contracts with clauses that stipulate mediation in the workplace for settlement of disputes, and the relationships between the decline in unionism and rise of individual grievances (Roche & Teague, 2012).

Other streams of literature have focussed on circumstances under which processes, such as mediation and arbitration in collective bargaining (Dunlop & Zac 1997; Ury, Brett & Goldberg, 1989) or negotiation (Lewicki, Saunders & Minton, 2000; Fisher & Ury, 1999; Walton, Cutcher-Gershenfeld & McKersie, 2000) should be implemented. Research about the rise of individualism and decline in collectivism has fuelled research inquiry. Academics have been less interested in researching ADR and conflict management systems that respond to individual conflicts and disputes at the level of the workplace.

In the 1980s, Ury, Brett and Goldberg (1989) warned that the organisational context shaped the way conflict was managed. Ostrom (2006) noted that researchers had still not researched mediation styles. Roche and Teague (2011) questioned whether there was a link between what they defined as innovative conflict management systems, the rise in individualism and high performance management. They surveyed firms in Ireland categorising innovative ADR conflict management practices as

- external arbitration
- engagement of external experts as early as possible to assist
- early brainstorming and problem solving to resolve problems
- use of formal interest based win/win negotiation techniques
- intensive formal communications regarding change and consultation as ADR practice to prevent conflict.

The procedures above reflect the ADR processes embedded in the ‘innovative’ New Zealand legislation. Roche and Teague (2011) asserted ‘innovative’ ADR conflict management practices “reflected a broad based attempt to foster commitment by aligning non-adversarial and consensus focussed approaches to dealing with disputes or contentious issues” (p.454). The aim of the New Zealand legislation was to prevent dispute escalation and protect the ongoing employment relationship. Colvin (2004) had identified a relationship between team-based working conditions and innovative conflict management practices and Lipsky and Seber (2003) had asserted that high performance workplaces had driven innovative ADR conflict management practices. Whether team-based work and high performance organisations share the same goals for embedding ADR in the workplace is not the subject of this paper, however, there is an emergent question about the relationship between early resolution of disputes and high performance. The ERA makes a link between ‘problem solving by mediation’ and ‘building productive relationships’ in its object, but empirical evidence of positive or negative relationships between those constructs remains anecdotal.

Claims of positive change due to individual ADR intervention has been common in professional ADR practitioner literature (Cloke, 2006; Cloke & Goldsmith, 2000a,b; Tillet & French, 2009; Bush & Folger, 2005; Bowling & Hoffman 2003; Winslade & Monk, 2008). There is an increasing focus on workplace dispute systems design (Ury et al., 1989; Constantino & Merchant, 1996; Donais, 2006; Bingham, 2012). However, systems, policies and processes for resolving workplace conflict early have proven difficult to compare and evaluate. Researchers (Felstiner, Abel & Sarat, 1981; Bingham

& Chatechere, 1999; Antes, Folger & Della Noce, 2001; Bingham, 2004), and mediators (Mayer, 2004; Bush & Folger, 2005) have articulated a gap in international research about the phases of emergence, transformation, resolution, settlement, or escalation from conflict to problems, grievance and dispute.

There has been a response to calls for empirical research that identifies dimensions comparison between interest based negotiation (Mayer 2004; Budd & Colvin, 2008) and transformative mediation (Bingham & Chatechere, 1999; Bingham, 2004). Bingham (2012) found that transformative processes were more effective for fostering perceptions of interpersonal justice between disputants, and that there was a need for more research on styles of mediation. International comparative research has been hindered by differences between internal and external dispute resolution systems, and those delivered through the private and public sectors as well as across federal or nation states and different legal and policy contexts (Walker, 2009; Bingham, 2004; Donais, 2006; Bingham & Chatechere, 1999; Fueille et al., 1992). Roche and Teague (2011) noted research on conflict management systems had predominantly focussed on internal systems design in large organisations (Bingham, 2004; Jameson, 2001; McDermott, 1995; Ewing, 1989; McCabe, 1988; Lewin, 1987). One dispute system design that has been extensively evaluated and reported by Bingham (2012) found that organisational context shaped how disputants responded to perceptions of justice in the REDRESS transformative mediation programme. While systems were embedded in the organisation, mediation was provided by external third party neutral independent, contract mediators in a highly unionised environment. A significant body of empirical work has followed the mediation of disputes in the US postal service REDRESS (Bingham, 1997; Bingham, Chessmore, Moon & Napoli, 2000; Bingham & Novac, 2001; Bingham & Pitts, 2002; Bingham, 2012). That body of research has investigated process, substance and outcome. It is seminal work that reports on actual mediated disputes, mediator training and the efficacy of a range of approaches to negotiation, mediation and early conflict resolution.

It is clear there is an international research gap on workplace conflict management, and the reasons are too methodologically complex to explain in this paper. Suffice to say that the power imbalance inherent in the employment relationship and principles of voluntary participation, confidentiality and without prejudice nature of ADR pose ethical and methodological problems for research design. Situational factors impact on real-time and longitudinal studies. There are serious ethical issues for researchers to consider. For those who seek to conduct interpretive field research, data collection could be harmful to both parties and the organisation. The researcher risks influencing the dispute and is vulnerable to accusations of breaches of confidentiality. Simulated experimental research design cannot replicate organisational context or spontaneous communication which often explains the interests in dispute. Access to organisations is problematic because institutions engage in ADR to protect the reputation of individuals and the organisation; they are unlikely to share data without rigorous conditions and requests for publication embargos. These issues have influenced the design of the PhD research reported in this paper. The next section explains that research.

Significance of conflict management in the education sector

During conceptualisation of the PhD project, conflict management in the education sector was in the spotlight. Workplace conflict and employment relationship problems were reported to be particularly vulnerable to escalation. In *Lewis v Howick Board of Trustees*. Colgan J, the Chief Employment Court Judge, claimed the management of ERPs required caution in regard to procedural legalism. Judge Colgan associated the instigation of formal legal processes by the board of trustees early in the dispute with escalation of conflict involving the whole school community. The commentary of the Judge in *Lewis* reflected earlier secondary research across industry sectors (Waldegrave, et al 2003; Wyse, 2006) which suggested some lawyers, parties and advocates favoured more adversarial

processes than mediation to resolve or settle employment relationship problems. Adversarial approaches to negotiation and conflict resolution are deemed to damage trust in relationships and create perceptions of procedural unfairness. *Lewis* provided questions for inquiry at the level of the sector, the workplace and the individual.

The sector operates in a highly unionised environment with a wide range of legislative requirements, regulations and processes for the delivery of education to New Zealand children. There are tensions related to the special interdependent relationship between governance by boards of trustees and their management of staff and the principal. The governance structure emerged from reforms in the education sector in 1989 where boards of trustees were established by the Tomorrow's Schools' policy under the Education Act 1989. Boards became the employer responsible for recruitment, discipline and dismissal. This governance/management structure treats the principal, who is also a member of the board of trustees, as an employee of the board in the same way the teaching staff are employees of the board of trustees. Each school's board of trustees is a democratically elected group of community representatives who usually have children attending the school. The research reported in this paper is concerned with the complex employment relationship between boards, principals, teachers and parents. Ethical considerations have included the safety of participants when gaining access to schools and conducting interviews with members of boards of trustees, principals and senior management teams. All parties to specific conflict episodes or ERPs were not interviewed because there was a potential risk of escalating conflict and subsequent harm when conducting interviews, given the power imbalance between employer and employee. Thus, one limitation of the research is that it only reports the management and governance perspectives on relational conflict and ERPs in the primary school workplace.

The research questions and design

The goal of the ongoing PhD research reported in this article is to build theory about the nature of employment relationship problems and how to manage conflict in the workplace. We wished to find out: what types of workplace conflict and employment relationship problems had been experienced; what organisational conflict and dispute resolution policies, processes and practices were implemented at the workplace level; how participants made sense of ongoing employment relationship problems; how conflict and ERPs had been resolved and why problems had been avoided, managed, escalated, resolved or settled.

Workplace conflict was conceptualised as defined by Roche and Teague (2011: 442):

Workplace conflict involves differences of view and conflict between individual employees and their employer; among individuals; and between groups of employees, whether unionised or not, and their employer. It is recognised that the management of workplace conflict can have beneficial effects for employers, employees and other stakeholders in the business.

A social constructivist approach was taken in this research because the study aimed to understand and describe how participants made sense of conflict episodes according to differing values and world views (Guba & Lincoln, 1994; Cooperrider & Barrett, 1990; Crotty, 2003; Cresswell & Plano-Clark, 2006; King & Horrocks, 2010). Studying the emergence and transformation of conflict events required studying the social process in which they occurred (Felstiner et al., 1981). Relational problems, conflicts, and disputes are social constructs, stories reflecting different understandings, negotiation strategies and styles of communication between individuals and groups. In the education sector, the interplay between pedagogical beliefs (theories of thinking, learning and teaching)

suggested that philosophical tensions and relational conflict could be common place in the negotiation of workplace relationships.

While the research process is inductive and iterative with data collection, analysis and application of extant literature occurring simultaneously, 33 qualitative semi-structured, face to face in-depth interviews were conducted during the summer and autumn of 2011-2012. Participants were asked to recount recent stories of conflict and or ERPs they had experienced. The interviews were digitally recorded and transcribed. There have been in excess of 200 conflict episodes or ERP cases recounted which were transcribed, read line by line, coded and tabulated by participant across types of episodes, the chronology of ongoing actions, social and organisational context, relationships, interests, issues, rights, management processes, cues to sense making, outcomes and relevance to extant literature. Memos of observational data about settings, processes, policies, communications and relationships within schools were noted directly following the interviews. From analysis of the coded, categorised and tabulated data four themes emerged. In the voices of the participants these are: 1) Building the emotional bank account: relational trust, 2) Power and percolating problems, 3) Quiet discontent: a culture of complaint, 4) Earning and learning through conflict.

Findings

This section reports one emergent theme, *Building the emotional bank account: relational trust*. For the purposes of this paper the (pseudonym) voices of participants from principals, team leaders and dispute resolvers provide exemplars that illustrate the theme of mutual trust building through collaborative interest-based problem solving. Following the discussion of favourable outcomes, where relationships have been strengthened and conflict resolved, the paper moves to a comparison with employment relationships that have been severed by negotiated exit packages. The importance of good faith processes for trust and the role of parental complaints in the escalation of employment relationship problems inform the final discussion.

Catherine, the principal of a fast growing urban school, recounted her management by walking about as one approach to building good faith and preventing escalation of conflict:

Every morning I walk around every class in the school and touch base with people and comment I mean I think that is a really, even though it is not directly related to conflict management, to me it's your building good will and trust so it's like your emotional bank account is quite full, so that when something comes up, or when you don't handle something quite as well or there's a conflict...I mean I'm thinking about potential conflicts between me and staff or me and parents, there is quite a bit of good faith coming to the table so I think that is a really important antecedent for keeping things at bay really.

Martin, a young male team leader, tells the story of his interest-based collaborative approach to managing a difficult team

I inherited a pretty septic team. The reason the septic culture had occurred was because there had been some relationship breakdowns. There had been a guy in my role who had played good cop bad cop with a woman co-leader; she was the one who had to make the hard calls. I wanted it to be more of a problem solving approach. If there is an issue then I go to the person and we talk about their story. For me it is about reassurance and giving people the confidence to know they are trusted enough as professionals that issues are not about them as a person.... my goal this year has been around creating trust in relationships. And um it's gone woosh it's amazing, when people feel safe people are engaged people feel empowered it's all about a

collaborative reflective process. I'm reporting comments that staff and management have made about my team...and that is... those... um are um the values and the relationships of practice which are very much evident in the way my team is now.

Tschannen-Moran and Hoy (2000) described interdependence in a trust relationship required benevolence, reliability, competence, honesty and openness. The advice Tschannen-Moran (2004) offered a principal was to walk the talk of modelling, reflective coaching, managing, negotiating and mediating. We found several examples of a similar approach. Lisa, a principal of 15 years, said:

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 and one ends up not getting it. So you have to have empathy for them and really work with that person. One staff member wrote me a letter and said “I feel this, this and this”- they said they couldn’t talk about it so we sat down; I had the letter in front of me and for the purposes of reflective coaching it was a talking document and the teacher remained on the staff.

Schuman (2005) focussed on consensus for building trust by allowing individuals to explain their reasoning and intent, focus on interests rather than positions, combine advocacy and inquiry, allow for discussing un-discussable issues, ensure that every person is heard, and promote authentic listening. When Thomas arrived as principal at a suburban decile 1 school, he said conflict and illegal behavior was “embedded throughout the culture of the school”:

I'd uncovered a huge amount of fraud within the school the DP was stealing money and resources and laptops, a whole range of things that'd been going on for yonks. At the board level we were re-envisioning the school and looking at the mission statement and the vision statement. The motto of the school was when I started, and had been since the school opened to “be honest”. So that used to make me laugh, all these rules they had “do not, do not”, their vision statement “be honest”, all the things they weren't doing. It took us a whole year to develop a new vision statement and our values and where we wanted to head. And I thought this is going to be a joke we're not going to get parents involved in this process compared to high decile schools. But it was the best experience I've ever had. Out of all my schools as a principal I had the most buy in and involvement here. It might have taken a lot of talking and a lot of time but it was unbelievable. It was amazing. They came to the focus group meetings and the conversations went on for ages ...and... they were such sad stories... “My older boy came to the school and principals and the teachers did not care” they were telling all these stories which seemed irrelevant to what we were doing now but it was good for them and fed into what we needed to become trusted.

One mediator found negotiation coaching contributed to the resolution of conflict. Redburn's (2009) case study research identified facilitation strategies of active listening and summarising skills were important in conflict and communication coaching. Sarah, a mediator, facilitated successful resolution in a complex employment relationship problem between a board member employed as a teacher aide and the classroom teacher:

While in the classroom an aide took direction from the teacher, the aide was not only an employee of the school but was on the board of trustees and a strong contributor to the local community in a number of roles. She was well educated and well informed about educational issues. The teacher was a relative ‘new comer’ to the community and not involved in as many local groups and committees as the aide. They made several complaints about each other. I met with both parties separately, twice each for about an hour per session. We then met all together for a joint session during which the participants made commitments to each other about their future behaviour which were further negotiated and confirmed by email. The first

individual session was an opportunity to get to know the participants and the problem. The second joint session was an opportunity to 'coach' the participants in active listening for the final 'joint' session. The relationship improved and both parties remained employed.

While the above exemplars illustrate resolution of issues and good faith behaviour to protect ongoing relationships, positive outcomes were not reported where parents had filed formal complaints about teacher competency that led to negotiation or termination of the teacher's employment. This was identified as a trend common to all participant data sets, by principals and senior team leaders, dispute resolvers, education experts and leaders of interest groups. Peter is a principal in an urban area experiencing fast gentrification in a decile 8 school. He understood the confidential settlement negotiation process as one of face saving:

We had six parents come in and complain about one teacher they had a meeting to see me about the reports because they thought they weren't accurate and they didn't know where their kids were at. We did have in-class support going on for the teacher concerned so we were already in the process before they came in....so we were moving down toward competency, but when the six came in, the board chair had a word to the union and said look this is going to go really badly, but we can come to some sort of negotiated or mediated agreement and well this is what we're prepared to offer, and so...everybody saved face. Everybody saves face...everybody has dignity. It's about everyone having dignity.

Lawyers and mediators consistently commented that this settlement approach was common. An employment lawyer described it as a systemic problem:

Within the education sector there is a strong kind of settlement culture of, if there's a problem you pay something and the teacher moves on. There is not a strong culture of actually addressing problems in the workplace, so there is a sense that you pay someone some money and they go. They get a settlement and also there is a sense that if you do things quickly the Teachers Council need not become involved and if things get defensive that's sometimes used to put pressure on people to settle.

Principals in fast growing urban schools observed they had begun to experience more parental complaints which they believed were influenced by demographic factors. Lisa, a principal in a decile 10 school, said:

I mean if I compare complaints and problems to when I worked in a low decile school, parents are scared stiff of the teachers in a really big way, they think we are godly things, you know that aren't to be taken on. Decile 10 is the whole other end of the spectrum. You'll get taken on over every little wee thing.

The observation above was common and several principals in urban areas claimed evidence that gentrification and an influx of professionals in the community corresponded with a rise in parental complaints about teacher competency and performance. These issues are the subject of further investigation in the third theme; 'quiet discontent: a culture of complaint' where the relationship between formal complaints, the appointment of lawyers, notification of potential employment problems to insurers, legalism and escalation of disputes are analysed.

Discussion

Collaborative, interest-based conflict management in schools has a logical relationship to relational trust. Deposits in the ‘emotional bank account’ may be implicit in the psychological contract between boards of trustees, principals and teachers, but explicit in the objectives of the ERA. While positive outcomes from interest-based processes are highlighted here, there were also inconsistencies. These preliminary findings indicate the objectives of the ERA to build productive relationships through good faith behaviour and promote mutual trust can be met in situations where an explicit problem solving approach is embraced by colleagues. However, the interviews demonstrate risks and barriers when formal complaints escalate problems.

Employment relationships were strengthened by the interest-based, collaborative, empathetic, reflective processes that Catherine, Martin, Mary, Sarah and Thomas implemented. On the other hand, during bargaining of exit packages between the union and chair of the board of trustees at Peter’s school, good faith processes were not apparent. If parental complaints increase pressure on boards of trustees before competency and performance processes have concluded, this raises important questions for this research. How can teachers have trust in their employers if there is a culture of settlement, a taken for granted assumption that parental complaints risk severance? When teachers have lost their job at one school and move to another school, are issues of professional development resolved? Is there repetition of the alleged competency and performance problems in the next school?

The findings here illustrated the importance of good faith processes. It is notable that a discourse of *complaints* not *problems* featured strongly in conflict events reported by the participants. This infers workplace dispute resolution is understood as a process for discerning fault rather than a process of mutual problem solving. The good news is trust building through problem solving strengthened the psychological contract in the cases of Catherine, Sarah, Lisa and Martin. We assert that negotiating the psychological contract is an ongoing complex process of building trust in the employment relationship. We claim Catherine’s metaphor “building the emotional bank account” reflects our conceptualisation of strengthening the “psychological contract” and the goals of the ERA 2000, for “good faith behaviour” to “build mutual trust and confidence in all aspects of the employment environment and the employment relationship”.

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