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Putting Regulation Theory to Work in Industrial Relations

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Abstract

The main theme of the paper is that regulation theory is a valuable methodology for extending insights gained from studies in industrial relations to a richer understanding of complex societal change. The utility of the regulation approach is demonstrated through the use of a case study to highlight the changing role of the New Zealand state during restructuring in the 1980s. The specific case study is a series of industrial negotiations in the secondary school sector during 1987-1989 when state sector, industrial relations and education legislation changed radically. The analysis is then extended to encompass and elucidate some trends in education industrial relations at the present time. It is argued that regulation theory then serves to connect industrial relations to a wider social science research programme.

Introduction

Between 1987 and 1989 was a time of great change in the role of the state in New Zealand as a consequence of the Fourth Labour Government initiating wide-ranging economic and social policy reforms. A case study highlighting the complex industrial relations that occurred within the state sector during this time was selected for analysis (Simpkin, 1992) and will be reported in this article. The case study focuses on a series of negotiations between the State Services Commission (SSC) and the Post Primary Teachers' Association (PPTA) during the period 1987-1989. The negotiations were concerned primarily about education restructuring, which in turn was as a subset of both state sector restructuring and industrial relations restructuring. These waves of restructuring involved a shift in the governance structures of the state.

Walsh (1990) had earlier analysed these negotiations as well as those of the primary teachers' union, the NZEI (New Zealand Educational Institute) and noted that:

> The negotiations for the primary and secondary teachers' awards in 1989, and their aftermath, were tortuous affairs, which ranged over a wide array of issues. The negotiations themselves unfolded in complex and halting patterns, punctuated by bursts of industrial action, offers of compromise, sometimes later retracted, and, above all, long and numbing bargaining sessions. They were marked by acrimony, by accusations of bad faith and on many occasions by a sense of genuine outrage on both sides that is not often found among professional industrial negotiators. (Walsh, 1990:8)

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In order to provide a sufficient account of the negotiations, the analysis needed to first, encompass discussion of the role of the state and a description of the process by which this shift occurred. Second, the analysis needed to explain the intricate interweave of industrial relations, state sector and education restructurings that threaded through the negotiations within the context of economic, political and social change. Third, during the negotiations, two separate economic and social discourses came into conflict across the bargaining table; one was a neo-liberal discourse and the other was the Keynesian Welfare National State (KWNS), (which was in the process of being replaced). The analysis, therefore, needed to encompass these discursive differences in some way. Fourth, as a group secondary teachers were opposed to the restructurings and thus the outcome of the negotiations meant that those teachers who were opposed to the reforms exhibited an entrenchment of values. Hence, the analysis also needed to be able to deal with agency. The combination of these requirements for analytical complexity proved a challenge for the efficacy of conventional approaches to industrial relations.

To portray the negotiations in greater depth, a theoretical tool was needed that could integrate a discussion of the economy and society and their change in a particular time and place. To analyse the institutional setting, to which the reforms were impacting on, the tool also needed to be able to take into consideration a longer timeframe than just the negotiations themselves. Some of the positions adopted at the table could only be explained by their evolution over time within a professional setting. The tool also needed to be able to consider value or belief systems. The final measure of success of the tool would be that it possessed some predictive power past the events of the case study themselves.

In the event, the application of the principles of French Regulation Theory to the case study provides a powerful tool for teasing out the complexities and allowing the interweave of different levels of analysis to arrive at a necessary and robust explanation of events at that time. Regulation theory provides an approach that emphasised the mutual interdependence of the economic, political and social changes. This meant that none took precedence and the case study demonstrated change as a complex matter involving agency that produces different outcomes in different places and different times.

Regulation Theory and Concepts

French Regulation Theory evolved from Aglietta's 1976 seminal work, *A Theory of Capitalist Regulation: The U.S. Experience.* It developed as a reaction against Althusserian Marxism. Althusserian structuralism rejected all idea of the subjectivity of individuals who could, through consciousness, reason and free will, affect social development. Although Althusser also rejected economic determinism, he substituted for it the concept of a complex structured whole that took causal priority over its economic, political and ideological parts. Individuals were simply passive supports for self-reproducing social relations (Althusser, 1971, 1996). French regulationists found Althusserian Marxism deficient in that economic structures were analysed as self-sustaining without effective social agency (Jessop, 1990).

Early regulation theorists engaged with economics from a neo-Marxist position but were mindful of the social processes that secure capitalist expansion within any

specific society. That is, there is not 'one' capitalism that needs explaining; rather there are capitalisms whose development "… is always mediated through historically and culturally specific institutional forms, regulatory institutions and norms of conduct" (Jessop, 1990:309). The close connection and the interaction of the economic, political and social dynamics within traditional Marxism is retained but the regulationist concepts of accumulation regimes and modes of regulation are produced by struggle and do not determine outcomes. Nor is there a simple correspondence between the economic and the institutions that exist alongside it. Institutions are created out of past, present and future struggles. In other words, the regulation approach tracks continuities and discontinuities embedded in this complex, dynamic interplay of the economic, political and social.

Jessop has applied the work of the regulationists to the state (1990) and to public policy and governance (1994; 1995). He rejects essentialist notions of the state (the state is an ideal collective capitalist) and also avoids treating the state as a simple instrument and/or an autonomous subject of capitalism. He argues that theories that view the state as managing the tensions and contradictions in regulation can be reductionist. Also, theories that describe the state as having to manage the tension and contradictions in order for capitalism to proceed can be functionalist. In his view, the state is part of the mode of regulation and must itself form an object of study.

Boyer (1990) discusses the method by which concepts of the regulation approach can be put to use in empirical situations. He suggests examining the social relations that display continuity and fall within the logic of existing forms and contrasting them with the discontinuities that comprise the constitution of new institutional forms in order to explore the possible transition between two regimes of accumulation. Boyer's institutional forms act in three ways. First, through laws, rules, and regulations. Second, through reaching a compromise, after negotiations, and third, through the existence of a common value system or at least common representations of reality.

These principles proved useful in analysing the PPTA case study, in which Dale (1990) has reproduced the different levels of analysis in a diagram. The figure is an attempt not only to separate out conceptually the different levels of analysis which the regulation approach can give rise to, but it also attempts to place the study of education within each of the levels of analysis. Dale argues that little is known about the interconnection between the economy and regulation of it *and* education policy and the regulation of it. This gives rise to questions, such as how does change in one bring about change in the other? Why should institutional change tend to be all in the same direction? The state provides one explanation of a unifying factor. However, as the case study demonstrates, the state itself is not always coherent. At the end of the negotiations, the teachers who were part of the state remained committed to the values of the KWNS which were more entrenched as a result of their fighting to take issue with the reforms.

Figure 1: Levels of Analysis

A. The World	B. National Economic & Social Formation	C. National Politics	D. The Politics of Education	E. Education politics
A1. World economy. A2. International system of state. A3. 'Carriers', Multi-National Corporations: International organisations. A4. Regimes of accumulation.	B1. Modes of regulation. B2. Historic bloc.	C1. The political settlement: (a) The entitlement/ provision balance. (b) Constitutional forms. (c) Modes of interest representation. (d) Modes of political rationality. C2. The role of the state.	D1. The sources of education policy D2. Education as a mode of regulation (social foundation of economic power). D3. The scope of education.	E1. The contradictions of education policy. E2. The pattern of education policy.

ABC: The terrain of the state.
BC: The national settlement.
CD: The education settlement.

Source: Dale, 1990:34

Some explanation of the terms "the regime of accumulation" and "the mode of regulation" is necessary as these concepts are not necessarily mutually exclusive. For example, "the regime of accumulation" and "the mode of regulation" can be regarded as different lenses through which to view the complex interaction of the economic, political and social. Three excerpts from prominent users of the terms are included here to provide an overview of the terms.

Harvey (1989:121) succinctly portrays the interrelationship between the concepts of regime of accumulation and mode of regulation, as well as the comprehensive sweep of their scrutiny.

> A regime of accumulation describes the stabilization over a long period of the allocation of the net product between consumption and accumulation; it implies some correspondence between the transformation of both the conditions of production and the conditions of reproduction of wage earners. A particular system of accumulation can exist because its schema of reproduction is coherent. The problem, however, is to bring the behaviours of all kinds of individuals – capitalists, workers, state employees, financiers, and all manner of other political-economic agents – into some kind of configuration that will keep the regime of accumulation functioning. There must exist, therefore, a materialization of the regime of accumulation taking the form of norms, habits, laws, regulating networks and so on that ensure the unity of the process, i.e. the appropriate consistency of individual behaviours with the schema of reproduction. This body of interiorised rules and social processes is called the mode of regulation.

Boyer (1990:35) defines "a regime of accumulation" as the set of regularities that ensure the general and relatively coherent progress of capital accumulation. The mode of regulation exists alongside the regime of accumulation and includes processes and individual and collective behaviours that serve to complement the regime. There is nothing determined about the mode of regulation, but for any regime of accumulation to exist, the historical institutional forms of the mode of regulation must be compatible, otherwise the forces of social interaction would not allow a system to become stable.

Amin (1994:8) uses less abstract terms in discussing the regime of accumulation and the mode of regulation.

> [The regime of accumulation] includes norms pertaining to the organization of production and work (the labour process), relationships and forms of exchange between branches of the economy, common rules of industrial and commercial management, principles of income sharing between wages, profits and taxes, norms of consumption and patterns of demand in the marketplace, and other aspects of the macro economy. … [The mode of regulation] refers to institutions and conventions which 'regulate' and reproduce a given accumulation regime through application across a wide range of areas, including the law, state policy, political practices, industrial codes, governance philosophies, rules of negotiation and bargaining, cultures of consumption and social expectations.

Analysing the Case Study

Teachers[†] confronted a situation of considerable complexity, structured by legislation in a context of the rapidly changing landscape of public policy under the Fourth Labour Government. Legislation followed the publication of proposed policy changes to the framework under which the pay and conditions of state servants were negotiated (Rodger, 1986). In education, the Picot Report (Taskforce to review educational administration, 1988) and the *Tomorrow's Schools* policy document (Lange, 1988) led into legislated changes to the administrative framework of schools which altered the positioning of teachers in relation to the state. Each fresh piece of legislation forced teachers to negotiate radical changes to the environment in which they worked and to their pay and conditions. These negotiations lay at the centre of interaction of old and new ideas about the practice of education as part of the state project. Through the application of regulation theory to the case study, the process of change and the encounter of two different approaches to the proper involvement of the state in governance of the political economy are made transparent.

The PPTA experienced a number of industrial successes through the years 1984 to 1987, in the closing days of an education system located within the Keynesian Welfare National State (KWNS). The confidence these successes gave the union and the structures put in place to achieve them were then turned strategically into defensive industrial positions in the face of radical restructuring by the Government.

[†]The term teacher will be used to denote secondary teacher throughout the paper. This is in the interests of brevity and is not intended to subsume primary teachers as well. A similar analysis could be undertaken of the New Zealand Education Institute (NZEI) negotiations of the same period.

The series of negotiations in 1987-1989 between the SSC and the PPTA were associated with the discontinuity of legislation for new personnel and industrial relations regimes. The SSC was not only legislatively responsible for negotiating with the PPTA on the Government's behalf, but it was also responsible for restructuring the state sector in support of neo-liberal goals.

The particular case study was chosen because it possessed some distinctive features. First, it provided the opportunity to consider the response made by a group of professionals to a radical programme of state restructuring, underpinned by a neo-liberal agenda. Second, the PPTA opposed much of the policy reform from a discourse situated firmly from within that of the KWNS. It was outspoken in this opposition and either protested or mounted industrial action against many of the proposals. The initiating reforms were contested and the result was the outcome of a rebellious struggle rather than the imposition of an ideology on passive recipients.

Third, the case study entails a number of separate negotiations where the difference between two discourses was evident. The bargaining table in industrial negotiations is always the site of struggle between differing interests but those in this case study saw the negotiation and struggle in a material sense over the vision of education that would prevail in the future. The negotiations were a conflict over the education principles of the KWNS as expressed by teachers through their negotiators and supported by industrial action, and new principles of education as contained within the discourse of neo-liberalism, expressed by the SSC, the government's negotiating body. The bargaining table, therefore, became a means of deconstructing the discourse of each other. Because of the PPTA's opposition, the bargaining table served to highlight the magnitude of the differences between the old and the new perspectives.

Fourth, the case study was situated within the state and the process by which change occurred could be observed. All of these features could be drawn upon to address the question of how change could be achieved within the New Zealand state in support of a new project when, a short time previously, the project lay within the principles of the KWNS.

The analysis of the industrial relations environment did not mount an ideological critique of the negotiations. Rather, the process was observed in order to establish key continuities and discontinuities with the past. The reforms were not viewed as a sudden break with the past. That is, the teachers carried aspects of the past with them when confronting the reforms resulting in a different outcome from the intent of the reforms because of that interaction. The real differences between the interacting discourses, however, were not analysed, especially as the parties themselves did not resolve them.

There was a strong partnership in education between the Department of Education, the PPTA, and sometimes the Minister of Education at the beginning of the period. This was regarded as a positive part of education in the KWNS. The theory behind the policy reforms labelled this partnership as “provider capture”, the result of self-seeking behaviour on the part of bureaucrats and teacher practitioners[‡]. The interaction of the two opposing views produced a shift in the form that education was

[‡] For a comprehensive analysis of provider capture, see Bertram (1988)

to take from that point on. Although the teachers did maintain theoretical and practical opposition to the changes and retained significant material ground in terms of pay and conditions as a result of the struggle, the outcome still represented a repositioning of teachers from central and influential players in education policy, to having only a marginal influence over education solely as employees of individual Boards of Trustees, with views confined to the classroom.

Figure 2: Structural Adjustment in New Zealand

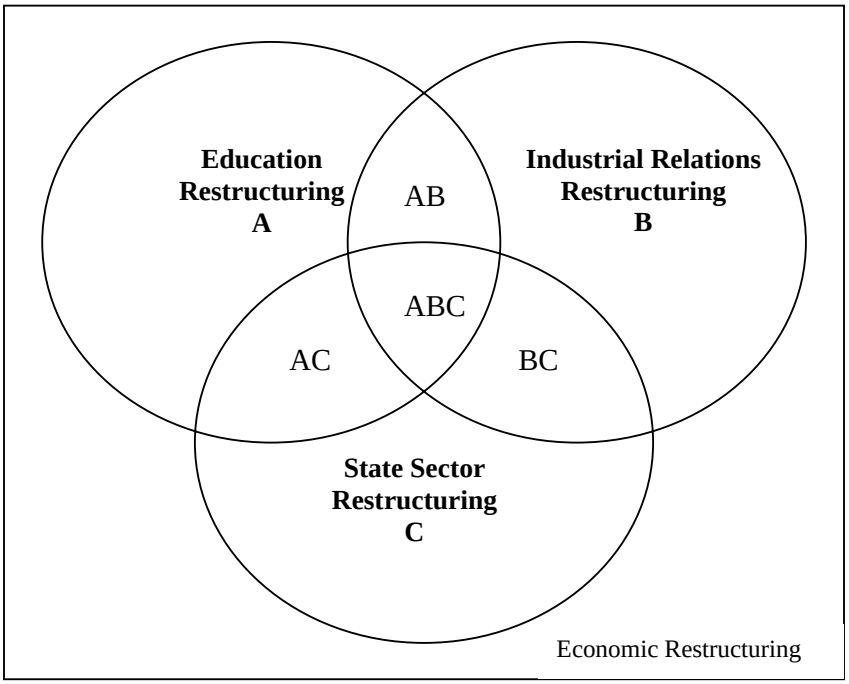

Figure 2 represents the interweave of analysis in which the three overlapping areas, A, B, and C, (the spheres of influence in the case study) are also represented in Figure 1. Each sphere contributed to the events of the case study and the analysis traced the historical development of each sphere of influence. The rules for conduct of the negotiations, the respective roles of the parties and their rights and responsibilities were all changed. Almost no aspect of previous structures and processes of the sites were left unchanged.

All the areas containing A represent the education area in which the PPTA had been influential and was regarded as its proper sphere of influence. The intent of the government's policy proposals was to confine the PPTA to a union role only in the AB area and ABC area, the overlapping part of education and industrial relations. After the *State Sector Act, 1988* had taken effect, the only relationship the PPTA could have with the rest of the state was in its role as a union and only over industrial relations matters. It is in the central point of intersection, ABC, that the full complexity of the case study is observed.

The Ideological Component

Boyer identified the need for a common value system as a requisite for stability. This was borne out in the analysis of the case study, which soon identified ideology/discourse as important elements in a number of ways. One way was the very strong theoretical justification for the reforms, initiated by the Treasury, which gave rise to policy documents from 1984 that displayed a neo-liberal discourse towards economic and social analysis that had not previously been part of official policy papers (Treasury, 1984, 1987). As noted above, the discourse of teachers was situated within the values of the KWNS. The interaction of these two discourses at the bargaining table was palpable and was more instrumental than pay and conditions considerations in determining the difficulty of arriving at negotiated outcomes. Thus, the institutional change in this case study was as influenced by discursive interaction as it was by the material practice involved in industrial relations. The greatest continuity through the case study was the continued commitment of teachers to the educational values of the KWNS. The cause of discontinuities arose from the changed discourse of official government bodies that enabled previously concealed tensions within education under the KWNS to become transparent and develop.

The KWNS is used here as a summary adjective for the discourse of teachers that pertained throughout the duration of the KWNS. For New Zealanders, the values of education in the KWNS have repeatedly been related to the well-known words of Peter Fraser, who, as Minister of Education, made his annual report to Parliament in 1939.

> The Government's objective, broadly expressed, is that every person, whatever his level of academic ability, whether he be rich or poor, whether he live in town or country, has a right as a citizen, to a free education of the kind for which he is best fitted, and to the fullest extent of his powers. So far is this from being a mere pious platitude that the full acceptance of the principle will involve the reorientation of the education system.[§]

International research and literature in education, particularly those of the UK and the US, overlay this part of the discourse that arose from within the society itself. The major trends of educational discourse worldwide opposed the neo-liberal approach to education and were available to New Zealand teachers.

Thus, while a consideration of discourse was an essential supplement to the tools normally associated with the regulation approach, once embarked upon, its consideration worked well with the regulation approach and seemed to arise naturally from it. This pre-dated the use of the term cultural political economy by Jessop (2004).

[§] New Zealand Parliament. House of Representatives Appendices to the Journals, E1, pp. 2–3, 1939. Cited in Alcorn, 1999.

State Sector vs Private Sector Industrial Relations

The regulation approach, particularly in the treatment of the state, also elucidated the factors that make state sector industrial relations different from private sector industrial relations. State sector industrial relations treats public servants as conceptually outside the state in their employment relationship. This has acted to obscure their very real participation in the project of the state.

The application of collective bargaining to state servants involves pretence at conflicting interests of employer and employees. While this may be true over pay and conditions, it is counterproductive for the two to be in conflict over the project of the state. This plays out in a different way in the core state sector than it does in the larger education and health enterprises. Teachers are at an extra remove from their employer than are those in the core state sector. Since the 1980's, it has been possible for the bargaining representative of government to engage with the collective bargaining representative of teachers without explicit regard for the state project in which teachers are involved. The state is therefore in continual conflict over education because of the 'fictitious' employer status conferred on one part against the very employees that are entrusted to interpret and put into practice the state educational project. As a result of confining teacher input into education within the industrial relations arena since 1989, the New Zealand state has imposed on itself a continuing conflictual relationship between the government and teachers that is not capable of resolution.

The term 'fictitious' is used in a similar sense to the way in which it is used by Jessop (2002) to describe labour power as a 'fictitious' commodity. Labour power cannot be separated from the human to whom it is attached and as such cannot be a real commodity in the way this is commonly understood. Similarly, an employer in the state sector can be a 'fictitious' employer only. The employer in the private sector is a corporate entity. Only one of the functions of the firm is that of employment. The firm's *raison d'etre* is to define its product, to balance its accounts taking into consideration all the costs of production and to create a profit. One of the costs of production is the wages bill. The employer in the state sector does not deliver a profit or, if it does so, can only do so within prescribed boundaries. Therefore, employees are not employed out of the profits of the organisation, nor does the realisation of value and its relative distribution apply to a state sector employer.

The case study highlighted the fact that teachers experienced bargaining as both a concentration of the pressures for change and the only forum in which they could express their outrage at the assault on the values they had previously assumed in support of the state project in education. The investigation examined changes in institutional forms during the period 1984–1989. It was particularly illuminating within the regulationist framework of Boyer and his categorisation of the three ways in which institutional forms work. Here we had a situation in which government changed laws, rules, and regulations in state sector industrial relations, in education industrial relations, and in the project of education itself. First, the *State Sector Act, 1988* introduced the principles of managerialism to the state sector. It also made all state servants subject to the same pay fixing legislation as workers in the private sector, the *Labour Relations Act, 1987*. Later, the *Tomorrow's Schools* changes to legislation defined teachers as employees of the local Board of Trustees. Some of the

components of the *Tomorrow's Schools* changes became items for negotiation, and also affected the context in which that bargaining occurred.

While Boyer did not intend the use of the term "negotiation" in the restricted sense of bargaining, this formal bargaining process provided an opportunity to view contestation in a tangible sense. During this bargaining, exchanges across the table demonstrated that two different and opposing value systems were operating, often resulting in industrial conflict. That it did so should not be surprising when the compromise of the KWNS was disintegrating.

While the negotiations during this period involved an ideological dimension, it was the negotiations of 1989 where the ideological battle culminated. The bargaining involved only four issues discussed over 34 days of formal negotiation. The matter of fixed-term contracts of employment for principals became non-negotiable for both the SSC and the PPTA because agreement could not be reached – the SSC supported it and PPTA opposed it. After this claim and the associated claim for flexibility of pay were removed from the table at the end of Stage 1, the PPTA was adamant that as much as possible of the previous system relating to teacher competence and discipline would be retained in their Award. These related to their professional project developed over thirty years. The SSC was equally adamant that as little as possible would be retained. That it was those four particular issues that became the focus was not accidental. For both parties, they were symbolically and materially representative of a different point of view towards education as a state activity. The SSC point of view stemmed from the principles of neo-liberalism. These assumptions were the self-interested nature of the individual and the need for incentives and sanctions to produce high performance. Also, teachers were defined as middle class capturers of the resources of the state. The PPTA point of view had been developed in the education settlement of the KWNS, with assumptions and principles stemming from that. The emphasis for them was on societal integration of workers into the total state project, with education as a societal good as much as an individual good.

The exhaustive and exhausting nature of the encounter demonstrated the utter incompatibility of the two approaches. The PPTA was prepared to forgo the usual rewards of bargaining in terms of pay and conditions in order to defend an approach to education fundamentally at odds with the one it had known. The two parties struggled to find some ground for compromise that is usually the stuff of bargaining. The fact that they failed provides evidence that the approach to the operations of the state implemented by the Fourth Labour Government was radically different from the one that went before. While this has been acknowledged from the beginning of the change, the 1989 negotiations between the SSC and PPTA provides an opportunity to appreciate the scale of the incompatibility and to look at the implications. At the conclusion of the negotiations, the Government legislated across the outcome of the properly concluded negotiations and introduced fixed term contracts for principals anyway.

Although this was a bitter blow to the PPTA, the values of secondary teachers were left intact. They positioned themselves to continue to fight against proposals that they believed would be detrimental to secondary school education as they knew it. In so doing, they not only opposed the new ideas, but also refused to reach any accommodation with them. By the end of the negotiations, the KWNS educational settlement was at an end along with the legislation and regulations that had supported

it. But the values of the settlement were not forgotten and entered the structures of *Tomorrow's Schools* with the teachers. While change was occurring in both the regime of accumulation and the mode of regulation, by the end of 1989, (the time period of this case study), stability was still a long way off.

The regulationist analysis arrived at a level of explanation that portrayed the complexity of events. The negotiation of pay and conditions was not a focus. The regulatory framework was. The outcome was not predictable. The shift was contested. Secondary teachers asserted their values through their professional organisation, the PPTA. The values that were expressed partly reflected those of the KWNS in which education had operated, and in part reflected the relative autonomy of the classroom from state interference. The tensions inherent in education were exacerbated by the project of the Fourth Labour Government. The result was not pre-determined. In this case, teachers encountered in industrial negotiations a proposed regulatory framework that had not yet become the future. They met it with the educational and social values of their present and past.

The implication of this for the development and shaping of a binding ideology for schooling was profound. Schools education, as part of the mode of regulation, was after 1989 cut off from regular contact with the new ideology that informed many other parts of the state. While the central agencies of the new educational structures were operating according to the principles of neo-liberalism, policy implementation was in the hands of school Boards of Trustees which of necessity relied on guidance from the principal and teachers. Teachers, with their different values, were not forced into "negotiation" initially with the new ideas on a daily basis. This meant that schools education for a time remained outside the alignment and mutually reinforcing coherency of the policy application elsewhere in the state.

In this particular case, the loyalty of the teachers was still towards the KWNS state project in education. The usefulness of this had been superseded by another regime and state regulation of it. The answer to the question of how does change occur in the state must be, in this instance, not all at once, it takes time, and the change may not be in the direction that was intended. For schools in New Zealand, the Fraser myth continued into the new regime, one that made it difficult for the myth to change due to the isolation of teachers in their new positioning.

Extending the Analysis

There has been continued turmoil and instability in industrial relations in the schools sector since 1989. Treating teachers as though they are outside the state and not part of the creation of the state project for education is problematic. In education this, combined with the creation of a 'fictitious' employer in a form distinct from the rest of the state sector, has produced a sector that is evolving away from the intent of the *State Sector Act, 1988*. While the ultimate destination is not yet clear, analysis of recent developments in the schools sector bears out this argument.

At the time the *State Sector Act, 1988* was introduced into Parliament, there was little if any debate in the union movement over the desirability or otherwise of placing state sector workers under the same legislative framework as private sector workers. This aspect of the *State Sector Act* was not contested, (although the politicisation of the public service was), despite the need for the *State Sector Act* to define what the

market proxy would be. Finding suitable market proxies by which the legislatively determined employer and union can enter into bargaining has been a focus for state sector industrial relations in New Zealand since free wage bargaining was introduced. The *State Services Conditions of Employment Act, 1977* used relativity with the private sector as the market proxy. Arguably, this, combined with the KWNS partnership between the Department of Education, the PPTA and the Minister of Education, was better suited to the state project for education than the present. This is not to say that the previous system had no faults or tensions. It did have tensions, not least the exclusion of parents from education. For the bulk of the state sector under the *State Sector Act*, the market proxy used has been that of Departmental budgets.

For Departments, the employer was defined as the Chief Executive Officer (CEO). In health, separate Health Boards were split off from each other under the employer, again the Chief Executive Officer. The government of the day gives the CEO of a Department the task of managing one of the services of the state within a budget amount decided by Government. The wages bill of employees must be one of the allocations against this budget line. The case of schools education was very different due to the devolution of control over schools to the level of individual Boards of Trustees, the delay in devolving teacher salary budgets to the level of individual schools, and the resultant continuation of national collective employment agreements for teachers.

As argued earlier, the 'fictitious' employer in schools has proved particularly difficult because the structures of education differ from those of other parts of the state. Schools did not become a bargaining unit, partly because teacher salary budgets were not devolved to individual schools. Bargaining over wages and conditions has remained national. The Government's bargaining agent for the national collective agreement was the SSC for the larger part of the 1990s. It then shifted to the Ministry of Education in the late 1990s. Bargaining occurred under the provisions of the *Employment Contracts Act, 1991* through the 1990s. Unlike other unions in New Zealand at this time, the harsh nature of that Act had less effect on bargaining than did the exclusion of teachers from the education project of the state. During this period, comprehensive changes to the national curriculum and assessment took place. Teacher input to these policy changes was excluded. Policy development was the exclusive preserve of the Minister and his central agencies. There was only one forum therefore in which teachers could make their influence felt and that was in collective bargaining. Their 'fictitious' employer was either the SSC or the Ministry of Education, the central agency that coordinated other agencies over educational policy. Difficult and equally or more abrasive negotiations to those of 1989 have been a feature through the 1990s and the early part of the 2000s.

The last set of negotiations in 2004 for the renewal of the Secondary Teachers' Collective Employment Agreement demonstrated that the Government was ready to recognise that an industrial relations regime for schools that excluded teachers did not work. The provisions that were being negotiated were related to educational issues and education policy makers were present at the table. While this is not yet a sign that the structures will be changed to allow for teacher input into the state project for school education, it is a sign of recognition that there may be advantages in bringing the state project momentarily into the industrial relations forum. The round was therefore appreciably more peaceful than it had been for over fifteen years.

There is an additional 'fictitious' employer in schools – namely the Board of Trustees. The local Board of Trustees was defined in the *Education Act, 1991* as the employer for teachers in areas relating to hiring and firing, disciplining and performance, and implementation of some, particularly non-financial, aspects of the national Collective Employment Agreement. However, they currently do not have control over staff budgets except for those of support staff. For support staff, the constraint of the operational budget supplied by central government acts as for other departments as a market proxy. For teachers, the powers of the Board of Trustees are limited to personnel management.

However, even those employer powers that the Boards of Trustees currently have are showing signs of erosion. The separate and increasing powers of the Teachers' Council (TC), the New Zealand Qualifications Authority (NZQA), and the Education Review Office (ERO), combined with the increasing frequency of dismissal of Boards of Trustees by the Minister are undermining the employer powers that Boards of Trustees currently possess.

The NZQA has powers of recognition of all qualifications. Although the Teachers' Council decides whether individual teachers shall receive provisional registration in order to enter teaching, the NZQA exerts control over the level at which particular qualifications are recognised and thus, whether they qualify the individual for consideration for registration. This particularly applies to the entry of those people with overseas qualifications. Boards of Trustees are therefore constrained as to who they can employ as a teacher as it is the NZQA who decides whether qualifications are at a suitable level. The TC then combines this with other factors in a decision as to whether or not to award provisional registration. Boards of Trustees may employ those who are provisionally registered only, except in circumstances that the TC may approve.

The Education Review Office (ERO) also exerts powers of control over quality standards in schools. The quality of teaching, the standard of what is taught and Board compliance with Governmental policies are all monitored and assessed by ERO. ERO can be asked to assist the Minister and Ministry of Education in reporting on standards before a decision is made as to whether a Board of Trustees should continue in control or not. This occurred in the recent case of Cambridge High School.

The Ministry of Education, however, still has primary responsibility for the interpretation and the administration of a large number of clauses in the Collective Employment Agreement. While nominally Boards have certain powers, for example, over approving leave for individual teachers, the Ministry still constrains these powers via administrative control over the relief teacher budget. Even in matters relating to performance, the professional standards criteria in use were decided and negotiated by the Ministry of Education.

The Teachers' Council has been the central agency that has made the biggest inroads of all into circumscribing the powers of the Boards of Trustees to hire and fire. This is surprising, given that the Council is funded and nominally run on behalf of teachers. However, recent legislation has given wide-ranging powers to the TC to investigate and decide on disciplinary offences and competency matters, even if a Board of Trustees has dealt with the matter before. Thus, via the ultimate sanction of

deregistration, the TC, which stands outside the current Teachers' Collective Employment Agreements, can effectively dismiss teachers. The TC can override a decision by a Board, arguably the closest and most effective decision-maker over the behaviour and performance of teachers.

Thus, the 'fictitious' employer structure at schools' level seems to be in the process of being eroded. To claim back the powers originally devolved to the Boards of Trustees would require more political will on their part than they have ever exerted. To diminish the powers of the central agencies of NZQA, ERO, the Ministry of Education, and the Teachers' Councils would take political will on the part of a Minister of Education almost equivalent to the original restructuring. At the level of bargaining, the way seems to have been opened for the national collective employment agreement negotiations to be used as a forum for more than pay and conditions. However, here it would only take a determined Minister of Education to return to an environment where teachers are again excluded from discussing anything but pay and conditions. This would, however, mean a return to difficult bargaining rounds.

Conclusion

It has been argued that regulation theory was both a valuable and necessary tool in teasing out the consequences of the 1980s changes to the governance of education in schools through an industrial relations site. In particular, it drew attention to an ongoing instability in schools and associated industrial relations caused by teachers' ongoing commitment to the values of the KWNS and their exclusion from input into the state project for education. This is useful in analysing trends in the sector. The instability has resulted in strains on the structures set up by the *State Sector Act, 1988* and the *Education Act, 1989* and these have begun to undermine the employer powers of Boards of Trustees. The consequences for secondary education and industrial relations in the schools sector are still not clear.

Regulation theory was not only a useful tool in analysing this set of negotiations, but it also served to connect disparate political, social and economic influences with the industrial relations setting. The players in the negotiations were seen as embedded in political and educational contexts. The SSC was an arm of the reforming government intent on implementing a new discourse about public policy, including education. The PPTA's membership was committed to preserving the best in educational principles as they saw them. One was intent in effecting a rupture with the past, the other in defending education as they knew it. The specific set of negotiations was only one aspect of a more significant whole. Thus, the industrial relations event could be used to interpret other occurrences in society at the time, rather than just the event itself.

Applying the regulation theory sheds a different light on industrial relations. That is, rather than foreclosing on the case study and analysing just the players, events, issues and outcomes, it is possible to take a longer view of case studies and adopt a perspective whereby each case study has a history and a future embedded in the social relations to which the case study contributes. This is not to dismiss traditional industrial relations analyses but rather to indicate the potential for more complex analyses as opportunity arises. Regulation theory provides a tool for exploiting this and works two ways. One is that industrial relations can draw on and include insights

gained in other disciplines more directly. The other way is that other disciplines can benefit more directly by embedding industrial relations events in a broader social context.

In traditional industrial relations, levels of analysis are often artificially truncated in order to keep the field of focus narrowed. Using regulation theory, each level has its own richness of understanding which, if collapsed, loses that richness. If closure is the desired outcome, then obviously the regulation approach tool would prove unnecessary. The regulation approach does not negate other approaches, but can enrich them. In addition, although this particular case study was about education within the wider state sector, potential exists for its application to the private sector.

While space does not permit a comprehensive discussion of possible criticisms of regulation theory, it is important to acknowledge that this approach is not without its critics. One criticism that has been mounted is that the approach is a description, not a theory (Boyer, 1990). For this author, however, the theory provided a method of analysis that allowed for considerable complexity and layers and also provided a tool with some predictive power as well.

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A Critique of Probationary Employment Periods

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Abstract

In November, 2006, a private member's bill to introduce a 90 day probationary employment period, which would have allowed employers to dismiss employees for any or no reason and without having to follow a disciplinary procedure, was defeated. A future National government might still introduce probationary employment; other countries have it already. Such reforms represent an important component of a broader neo-liberal agenda to deregulate the labour market. We therefore critically examine arguments made in support of probationary employment, specifically focusing on the New Zealand Bill, and also more generally discuss the potential adverse consequences of probationary employment. In particular, we question whether probationary employment would alleviate the unemployment of so-called high-risk, high unemployment groups. We also maintain that probationary employment would have all kinds of adverse repercussions for employees and even employers. We conclude by exploring alternative, more active mechanisms for enhancing employment within different areas of the New Zealand economy.

Probationary Employment

Since its election in 1999, the New Zealand Labour Government has enacted employment laws to strengthen and extend worker and trade union rights, in an effort to undo some of the more extreme effects of the neo-liberal 1991 Employment Contracts Act. These legal developments in New Zealand have paralleled, though not always mirrored, those in the United Kingdom under New Labour. Most of the more important changes were introduced through the 2000 Employment Relations Act, which established restrictions on the form and content of employment contracts, improved union access rights, provided unions with the exclusive right to bargain collectively, established a union registration system, facilitated multi-union and multi-employer bargaining, provided greater institutional support to mediation, and established mutual, good faith obligations with respect to, for example, collective bargaining, redundancy, and the sale/ transfer of an employer's business. Further

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reforms were enacted with the 2004 Employment Relations Amendment Act, which introduced so-called bargaining fees, effectively an agency shop, for non-union employees covered by a collective agreement, extended good faith obligations, and strengthened employee dismissal rights, especially during the sale or transfer of a business.

Labour's reforms have prompted a business backlash, with more and more vociferous calls for deregulation. Business lobby groups like Business New Zealand and the New Zealand Business RoundTable have heavily criticised the government for imposing high legislative compliance costs on their constituencies. Since 2003, Business New Zealand has surveyed its membership for their views of these compliance costs. Survey results suggest that compliance costs are high, approximately $3,000 per person in smaller firms and $500 in larger ones (Business New Zealand, 2006). Moreover, employment law compliance consistently accounts for in excess of 20% of total compliance costs, second only to tax law (Business NZ and KPMG, 2006: 21-22). Chief among these employment law compliance issues is employee dismissal (Business NZ and KPMG, 2006: 29-31), with the complexities of dismissal procedure seen as a costly burden, especially if employers fail to 'get it right' and then have to pay compensation to employees (Business NZ and KPMG, 2006).

Against this backdrop, National Party MP Wayne Mapp in early 2006 sponsored a Private Members' Bill, the Employment Relations (Probationary Employment) Amendment Bill, to introduce probationary employment. Although the Bill was defeated in November, 2006, National's attempt to introduce such a law while in Opposition indicates what it intends to do if and when it becomes the government. As a result, far from being a dead issue, probationary employment and its potentially negative consequences remain a highly topical issue both in New Zealand and in other countries where it is already the law.

Had the Bill passed, it would have introduced a 90-day probation period, or a lesser period if agreed by the parties, for all new employees. Probationary employment would have immediately preceded employment under either an individual agreement or collective agreement, as regulated under the Employment Relations Act. It would have given employers the right to dismiss employees during or at the end of the 90-day period for any or no reason. As a result, probationary employees would have had no right to file for a personal grievance for unjust dismissal or to seek redress through any other dispute resolution mechanism, including Department of Labour mediation. An exception would have been made for discrimination and sexual and racial harassment cases under the Human Rights Act. Probationary employees would still have had the right to compensation for these causes of action. The Bill would also have allowed actions for breach of contract at the probationary stage.

Even though the Bill would have partially relieved employers of one of their greatest compliance cost headaches, its official purpose, as described in the Bill's Explanatory Note, focused on providing employment for disadvantaged groups. The Note claimed that probationary employment encourages employers to "... take a chance with new employees, without facing the risk of expensive and protracted personal grievance procedures..." enabling "...people who have not had previous work experience to find their first job and make (sic) it easier for people re-entering the workforce." In the same vein, Business NZ Chief Executive Phil O'Reilly claimed that "...employers can be reluctant to employ people

without a previous positive employment record, and the proposed legislation would help overcome the risks of doing so." He saw probationary employment particularly benefiting teenagers, new migrants, and "other groups whose unemployment rates exceed the average" (O'Reilly, 2006).

Critique of Probationary Employment

This paper critiques probationary employment, especially in the proposed form of Wayne Mapp's Bill. We begin our critique by arguing that the alleged job-creating benefits of probationary employment are based on erroneous assumptions about why some disadvantaged groups have stubbornly high unemployment. We next maintain that there is no evidence to suggest that probationary employment actually reduces unemployment or creates jobs. We extend our critique by arguing that probationary employment could have all kinds of negative impacts on employees and even employers. In particular, probationary employment could undermine employees' statutory employment rights, including their right to bargain collectively for a collective agreement. In addition, it could increase discrimination against disadvantaged groups it is supposed to help. More problematic, it would allow employers to dismiss perfectly good employees for any or no reason. "Scape-goating" probationary employees would be relatively easy, discouraging some managers from investigating and correcting more systemic causes of poor performance or bad behaviour (e.g., inadequate training programmes). Finally, the evidence suggests probationary employment would increase feelings of job insecurity, with adverse implications for commitment to the employer, labour turnover, and job performance.

Wrong Assumptions about Why the Disadvantaged are Unemployed

Supporters of probationary employment like Wayne Mapp assume that the higher than average unemployment rates of youth, minority groups, predominantly female re-entrants, migrants, and others can be primarily attributed to an information problem. The essential idea here is that employers do not have accurate, good quality information about the productivity characteristics (e.g., skills, abilities, motivations) of these workers, in the absence of any work experience (e.g., youth), recent work experience (e.g., predominantly female re-entrants), or easily verifiable work experience and/or qualifications (e.g., the foreign work experience and qualifications of migrants/ immigrants). It follows that employers are naturally reluctant to hire such workers unless permitted to hire them on a probationary basis.

It is true that some New Zealand employers are unsure how to evaluate certain foreign qualifications and work experiences (Bennett, 2006). Facing such uncertainty, they can be unwilling to hire such people for professional and managerial roles. However, a probationary period would do little to overcome this reluctance for several reasons. First, if mistakes caused by a skilled worker were costly, difficult, or impossible to correct, an employer would still not risk hiring an immigrant whose work experiences or qualifications were hard to verify. To take an extreme example, an airport would obviously not hire an air traffic controller, even on probation, whose overseas work experience and training could not be

confirmed. Second, if task complexity or long cycle times made an employee's performance difficult to assess within the short time-frame of a probationary period, employers would still not risk hiring someone they were unsure about. For instance, a university would want to be confident about a lecturer's research and teaching ability prior to hiring, because the long cycle times, especially for completing research, would make performance evaluation virtually impossible within a short, probationary period. Third, if an employee is expensive to recruit, select, and bring to New Zealand, an employer would also want to be reasonably sure that that person had the requisite skills and abilities before commencing employment. No one would spend $20,000 to bring an Irish engineer to New Zealand on a trial basis.

In reality, informational asymmetries like those described above are not the main cause of high unemployment among disadvantaged groups. More important factors include discrimination, a lack of education, and a lack of work experience among others. Many immigrants are the targets of discrimination. For instance, half of Christchurch's Muslim workers have had major difficulties finding employment, despite having qualifications and work experience in shortage fields like information technology (Bennett, 2006: 2). Others have had problems getting their qualifications recognised at all, or at an appropriate level, by trades or professional bodies or the New Zealand Qualifications Authority (Anonymous, 2006: 2). Still others have lacked the English proficiency to obtain employment where English communication skills are valued.

Many Maori and Pacific people are jobless because they lack qualifications. For youth, the problem obtaining employment is often their lack of relevant work experience. Unemployment rates for Maori, Pacific peoples, and youth are highly pro-cyclical (see, for example, Chapple and Rea, 1998; Te Puni Kokiri, 2000: 23), just as they are for blacks, Hispanics, and youth in the USA. For instance, Clark and Summers (1990: 80) report that a one percent fall in prime-age male unemployment in the US is associated with a four percent increase in teenage employment and, more specifically, a six-and-a-half percent increase in black teenage employment. What accounts for this extreme pro-cyclicality in unemployment rates? Maori, Pacific peoples, and youth are less skilled than their older and/or Pakeha (European) counterparts. Maori and Pacific peoples generally have lower levels of schooling (Maani, 2004; Te Puni Kokiri, 2000; Winkelmann and Winkelmann, 1997) and are less likely to receive employer training (Gibson and Watane, 2001). Evidence of occupational segregation by race (Easton, 1994; Herzog, 1997) also suggests that Maori and Pacific peoples are more likely to be the victims of discrimination, even when they do have the appropriate schooling and/or work experience. Young people may have the formal education, but lack the work experience which would provide job skills (Isengard, 2003; Russell and O'Connor, 2001). The evidence suggests that all three groups are therefore less preferred as employees: the last to be hired and first to be fired (dismissed) (LIFO) (Gibson and Watane, 2001; Grimmond, 1993; Winkelmann and Winkelmann, 1997). If jobs are available, they are ordinarily offered first to prime-age people with better education and/or more work experience (Gibson and Watane, 2001; Winkelmann and Winkelmann, 1997). Employers generally consider hiring inexperienced and/or less educated people only when more preferred people are in short supply (Clark and Summers, 1990). If Maori, Pacific people, and young people do obtain employment, it is more likely to be in the less desirable secondary labour markets of the small business, service sector, where there are more limited

prospects for promotion, pay increases, and training and development (see, for example, Easton, 1994).

The pattern of high youth unemployment is similar in most European Union countries (Russell and O'Connor, 2001: 3). In general, youth unemployment rates are at least twice as high as those for prime-age adults (Isengard, 2003: 360; Russell and O'Connor, 2001: 3). However, a major exception is Germany, where youth and prime-age adult unemployment rates have historically been virtually identical. Much of this success is attributed to the German apprenticeship system, which enables younger workers to work in their chosen field as they study. As a result, younger workers emerge from their training having already had work-related experience, and so are not less preferred like their counterparts elsewhere (Isengard, 2003).

Failure to Lower Unemployment and Create Jobs

Is there any evidence to suggest that probationary periods reduce the relatively high unemployment rates of disadvantaged groups? The short answer is 'no'. Unscientific comparisons across countries also suggest that the answer is 'no'. Britain has a one-year probationary period, similar in most respects, except length, to the one proposed for New Zealand. The USA has the equivalent of an indefinite probationary system called employment-at-will, which allows employers to dismiss private-sector, non-union workers for any or no reason. However, neither Britain nor the USA can claim to have an obviously superior record in reducing the unemployment of, for example, younger or minority workers. In 2003, New Zealand's unemployment rate was 4.7%, but 10% for Maori, 7% for Pacific peoples, 7% for other groups (mainly Asian), and 14% for 16-19 year olds (Statistics New Zealand, 2004: 64-65). In 2001, the USA's unemployment rate was 4.7%, the same as New Zealand's two years later, but 9% for blacks, 6% for Hispanics, and 14% for 16 to 19 year olds (Bureau of Labor Statistics, 2006). In 2003, Britain's unemployment rate was 5.0%, just above New Zealand's in the same year, but 7% for Indians, 15% for Pakistanis, 13% for blacks (Trades Union Congress, 2006: 2), and 15% for 16-19 year olds (London Development Agency, 2006: 145). If anything, New Zealand's record appears slightly worse than the US's and slightly better than Britain's, given a similar average unemployment rate. The US's so-called success may reflect its incarceration of more than two million people, many of whom are young and/or black (Wood, 2004).

Some idea of the potential employment or unemployment effects of probationary periods is apparent in the fixed-term contracting research. In some respects, probationary periods resemble fixed-term contract periods, in that workers can be dismissed for any or no reason. With fixed-term contracting, this is only permitted at the end of a particular period - e.g., one or two years. With probation, this can be during or at the end of a particular period - e.g., one year in the UK. Some economists have examined the effects of allowing fixed-term contracting in France (Blanchard and Landier, 2002), Germany, (Hunt, 2000; Hagen, 2002), and Spain (Dolado, Garcia-Serrano, and Jimeno, 2002). In general, they have not found strong evidence of either increased job creation or unemployment reduction (Blanchard and Landier, 2002; Dolado, Garcia-Serrano, and Jimeno, 2002). Ironically, frictional unemployment has actually risen, since fixed-term contracting typically involves more spells

of unemployment, as workers often finish one job and become unemployed prior to taking up a new job (Blanchard and Landier, 2002; Dolado, Garcia-Serrano, and Jimeno, 2002: F282; Hagen, 2002: 701). Employment has become more precarious, as many employers have switched from open-ended to fixed-term employment relationships (Blanchard and Landier, 2002; Dolado, Garcia-Serrano, and Jimeno, 2002). Fixed-term relationships also generally appear to be associated with lower wages, 13% lower in Britain (Brown and Sessions, 2003: 504), approximately 10% lower in Spain (Dolado, Garcia-Serrano, and Jimeno, 2002: F284), and approximately 20% lower in France (Blanchard and Landier, 2002: F240) and Germany (Hagen, 2002: 667). The reduced duration of employment relationships has discouraged employers from offering training and opportunities for advancement as well (Dolado, Garcia-Serrano, and Jimeno, 2002: F284).

Denial of Probationary Employees' Statutory Rights

In principle, probationary employees would ordinarily have the same or similar rights as other employees with respect to, for example, holidays, health and safety, and minimum wages. In practice, probationary employees who exercised such rights could be lawfully victimised by their employer, in the absence of a right to file a personal grievance for unjustified dismissal or disadvantage. To take just one example, probationary employees who complained about employer health and safety violations could be dismissed for doing so. Likewise, a probationary employee who accompanied an inspector on a workplace inspection, provided evidence relevant to a health and safety investigation, or acted as a workplace health and safety representative or committee member could be dismissed. If fears of victimisation discouraged probationary employees from exercising their statutory rights, there would be a corresponding decline in enforcement activity and rise in undetected violations. A study of bullying in the British higher education sector (Simpson and Cohen, 2004) confirms that probation is generally disempowering, and so would leave employees more open to unlawful and/or unethical management behaviour.

Failure to protect probationary employees from victimisation could have far-reaching effects on the legality and/or ethicality of employer actions. Some workplaces employ workers for only a few months, perhaps because of the seasonality of their industry or perhaps because their pay and conditions are too unattractive to retain staff. If most workers were probationary, most might also be reluctant to complain of unlawful mistreatment by the employer. Even non-probationary employees might feel apprehensive about exercising their rights, if they felt unsupported or even undermined by their more numerous and more compliant probationary colleagues. In a worst case scenario, a general climate of fear could allow employers of mainly probationary labour to openly and extensively flout the law. Paying workers less than the minimum wage and requiring them to work on public holidays could become routine in some companies. Such unlawful behaviour has now become commonplace in the Philippines, following the introduction of a six-month probationary period (Skene, 2002: 495).

Denial of Probationary Employees' Freedom of Association

In some cases, probationary employees have been openly denied their statutory rights. For example, in the Philippines, probationary employees, unlike others with longer tenure, have no right to receive a thirteenth month of pay, overtime pay, social security, and retirement benefits, and no right to join a union (Lloyd and Salter, 1999: 7-8). In New Zealand, the Probationary Employment Bill would have deprived probationary employees the right to bargain collectively for their terms and conditions of employment through a union. Had the Bill been passed, it would have directly contravened international conventions concerning freedom of association which New Zealand officially supports. Article 20 of the United Nations' Universal Declaration of Human Rights states that: "(1) Everyone has the right to freedom of peaceful assembly and association; and (2) No one may be compelled to belong to an association." Similarly, the International Labour Organisation's Convention 87 states that: "Workers and employers, without distinction whatsoever, shall have the right to establish, and subject only to the rules of the organization concerned, to join organizations of their own choosing."

Council of Trade Unions President Ross Wilson argues that up to 200,000 workers would have been negatively affected (Huggard, 2006). In other words, approximately 10% of New Zealand employees would have been denied the right to be covered by a collective agreement every year. For New Zealand unions, this would have translated into a loss of as many as 30-40,000 members, given membership levels of 340,000 (May, Walsh, and Otto, 2004: 85).

In some workplaces, prohibiting probationary employees from bargaining collectively would have caused a collapse in union membership levels. The problem would have been particularly acute in workplaces with relatively high turnover and relatively low union density. If, for example, a union had represented only 25% of employees in a supermarket, not allowing probationary employees the right to bargain collectively could have prompted such a large drop in membership as to make continued collective bargaining and union representation untenable. Declining membership and financial resources could have so sapped a union's powerbase that it became totally unattractive as a bargaining agent, even to the most committed unionists among non-probationary employees. Firms presently organized by the National Distribution Union and Service and Food Workers Union might have proven especially vulnerable to this sort of collapse.

Some employers could have avoided unionization altogether by continually hiring people for no longer than the probationary period. This form of rotational hiring has become widespread in the Philippines, following the enactment of a six-month probationary period (Skene, 2002: 495).

More Discrimination against Disadvantaged Workers

A probationary employment period is supposed to encourage employers to take a chance on employing so-called high risk applicants. However, a probationary period would probably have the opposite effect, if the only protections provided probationary employees, as in the Probationary Employment Bill, were for discrimination or sexual/ racial harassment. New Zealand evidence suggests that women, older people, new immigrants, and people with disabilities are the most likely to file a complaint for discrimination or sexual/ racial harassment under the Human Rights Act (Human Rights Commission, 1999: 17 and 36). It

would be reasonable to expect that among probationary employees these groups would also be the most likely to file a complaint, no doubt for genuine reasons. By contrast, non-disabled, white males in their 30s would be much less likely to feel discriminated against or harassed and thus much less likely to file a complaint. In this scenario, probationary employee legal cases would be dominated by gender, age, nationality, and disability issues to the virtual exclusion of anything else. Even if there were few cases, their media salience could convince employers that women, immigrants, the disabled, and those over 50 were likely to be litigious. Given this belief, employers might develop a stronger preference for hiring seemingly easy to dismiss, 30-something-year-old, white men. Some commentators argue that this is precisely what has happened in the USA with the anti-discrimination exception to employment-at-will (Roehling, 2003).

The Dismissal of Competent Probationary Employees

Probationary employment would allow managers to dismiss any probationary employee for any or no reason. Incompetent, aggressive, or moody managers could resort to firing probationary subordinates for the most minor reasons. Disagreements over trivial issues could lead to instant dismissal for subordinates who are too competent, outspoken, or ambitious in the eyes of some managers. Sadistic managers might even enjoy firing workers. Impatient managers might also rush to dismiss probationary employees, whose poor performance had little or nothing to do with a lack of skills, abilities, knowledge, or motivation. Poor performance could reflect any number of other factors, including ambiguous instructions, ambivalent staff in supporting roles, malfunctioning machinery and equipment, and inadequate or nonexistent training.

The experience of employment-at-will in the USA suggests that good probationary employees could, and almost certainly would, be sacked, if probationary employment ever became law in New Zealand. In the USA, “an estimated 150,000 to 200,000 employees are dismissed annually who could assert legitimate claims under the good cause standard,” if it were available to them (Barber, 1993: 193). Such unjustified dismissals would be both unfair to affected probationary employees and wasteful and inefficient for the economy. Furthermore, frequent spells of probationary employment, interspersed with periods of unemployment, could be unjustifiably stigmatizing for some workers, permanently confining them to low-paying, dead-end jobs. However, there is presently no evidence for or against such a link. Some research does suggest that casualisation, more generally, can trap employees in dead-end jobs (Silver, Shields, and Wilson, 2005). Other research suggests that the majority of casual workers do eventually enter more permanent employment (Gaston and Timcke, 1999; Green and Leeves, 2004).

Early Career Employer Opportunism

Probationary periods would facilitate what Schwab (1993) refers to as early career employer opportunism. Early career employer opportunism is a special case of unjustifiably dismissing

good probationary employees. The idea here is that probation would encourage employers to be non-committal in their hiring. Some earlier applicants might be hired for their immediate availability rather than job suitability, and then replaced before the end of probation with better (e.g., more able or skilled) or cheaper (e.g., lower salaried), later applicants. This practice could have severe negative effects on earlier applicants. In the extreme, some might end up among the long-term unemployed, especially if older than 50, having relinquished a secure and well-paying position to take up a perhaps better paying, but more insecure, probationary one. Others might find alternative employment relatively quickly, but still face major costs in moving, selling their house, transferring a spouse's job, and settling children in a new school. No doubt, early expenditures on training or induction would discourage such employer opportunism. However, the case law under employment-at-will in the USA (see Schwab, 1993: 39-40) suggests that it would still happen in New Zealand.

The New Zealand Council of Trade Unions (2006) has suggested that fears of such employer opportunism could discourage a lot of desirable labour mobility, which would otherwise benefit employees, employers, and New Zealand society as a whole. For instance, some people might be less interested in re-training for shortage occupations, knowing that their initial employment was going to be probationary. Similarly, insecurity of employment might dissuade many from accepting lucrative job offers in other regions with lower unemployment. In the extreme, probationary employment might discourage many potential highly skilled migrants from coming to work in New Zealand.

The Use of Exit Rather than Voice to Address Poor Performance or Misconduct

Many poor performance and misconduct problems are potentially rectifiable. For instance, misconduct may be prompted by alcoholism (e.g., gross negligence in driving while drunk), exhaustion from overwork (e.g., failure to follow safety rules), anger at the unfairness of management decisions (e.g., disobedience), or retaliation for being ignored or mistreated (e.g., theft). That is why unjust dismissal law presently requires employers to use ‘voice’ (Hirschman, 1970) in managing poor performance or misconduct. More specifically, the employer cannot simply dismiss without first finding out what happened and why by interviewing witnesses and those accused of any misconduct or poor performance. As such, unjust dismissal procedures are very much an essential part of a problem-solving approach based on ‘voice’.

In contrast, probationary employment would allow employers to use ‘exit’ (Hirschman, 1970) by instantly dismissing a poor performer or wrongdoer, without first investigating whether and to what extent this may be justified. As against ‘voice’, early, unjust ‘exit’ of probationary employees would have two main disadvantages. First, it would help to mask organisational performance and discipline issues. For example, unjustly dismissing poorly trained employees might conceal or suppress, but would not remedy, major, ongoing deficiencies in training programmes. Second, ‘exit’ would enable firms to pass along their so-called problem probationary employees, one to the next, in an endless game of ‘pass the parcel’, without ever taking responsibility for rectifying employee shortcomings. For example, unjustly dismissing cantankerous or belligerent probationary employees, not guilty of any misconduct, might be cheaper and easier than providing counseling. However, in the

absence of corrective action, such employees could end up permanently less productive, resulting in an efficiency loss to the economy. More seriously, the stigmatisation of ongoing dismissal could render them permanently unemployable and a major drain on social security and social services.

The Negative Effects of Job Insecurity for Employers

Even employers could suffer under a probationary employment regime. Probationary employment would increase actual, and perceived, job insecurity, at least for the probationary period. Workers worried about the security of their jobs tend to focus more on preparations to leave than on making their employers productive or profitable. Research evidence suggests that higher job insecurity would lower commitment (Adkins et al., 2001; Ashford et al. 1989; Bishop, 2002; Buitendach and de Witte, 2005; Davy et al, 1997; de Witte and Naswall, 2003; Yousef, 1998), including commitment to change (Chawla and Kelloway, 2004; Pate et al., 2000; Preuss and Lautsch, 2002; Rosenblatt and Ruvio, 1996), lower performance (Rosenblatt and Ruvio, 1996; Yousef, 1998), and raise intentions to quit (Ashford et al. 1989; Rosenblatt and Ruvio, 1996).

Implications

General, market-oriented policies like probationary employment are inappropriate for addressing the specific unemployment needs of disadvantaged groups. More focused state interventions are needed. For instance, if skill deficits really are a major unemployment issue for Maori, Pacific peoples, and youth, these deficits should be addressed directly. The government should provide more support for apprenticeships and other training programmes likely to get younger workers, in particular, into jobs. More support for training could mean a student allowance for shortage occupations or help with re-payment of students' loans, following programme completion. However, the success of any apprenticeship initiative would be contingent on suitable institutional and contextual support. In the absence of an active state and union role, via effective and relevant tripartite forums, in defining the scope and nature of apprenticeships, employers may be tempted to use apprentices simply as a source of cheap, short-term labour rather than as the basis for building an industry-specific skill base for long-term competitive advantage (Hall and Soskice, 2001; Wood and James, 2006).

The government could also provide support to bridging, work-study programmes, similar to those in Germany, which help polytechnic or university students obtain career-related work experience while still studying. This would help to ensure that the broader skills acquired at universities remain relevant to employers requiring industry-specific skills. If employers do not know how to value immigrants' or migrants' qualifications and work experiences, this problem should also be addressed directly. The New Zealand Qualifications Authority could reduce the hiring risks by publishing more information on the quality of foreign credentials. Industry associations could do the same for foreign work experience, especially if associated with larger and better known organisations overseas.

Should anything be done to alleviate employer concerns about dismissal compliance costs? This is certainly a political problem, regardless of whether or not it is a serious economic one. Failure to tackle employer concerns is likely to prompt a future National government to enact probationary employment, whatever its negative impacts. If firing incompetents or wrongdoers is so difficult in the New Zealand workplace, and it is not clear that it is, this should be addressed directly through specific changes to existing dismissal law rather than indirectly and only partially through probationary employment. At present, ambiguities and inconsistencies in the common law rules that necessarily emerge from the many decisions of the Employment Court and Employment Relations Authority can create confusion and uncertainty for employers, adding unnecessarily to their compliance costs. In future, greater clarity could be achieved by placing explicit, default dismissal procedures for poor performance, misconduct, and redundancy in a new schedule in the Employment Relations Act. Codified procedures could also be used to instigate a harsher disciplinary regime, which would allow employers to summarily dismiss employees for major offences and after just one warning for minor offences (or poor performance). The quid pro quo could be much harsher penalties for employers who failed to adhere to dismissal procedures in the schedule. Clearer legal, guidelines would make it less necessary for both parties to litigate to enforce their rights. If litigation were pursued, clearer guidelines would make the process more predictable and thus less financially risky to those who used it. Employees might also gain by knowing more precisely where they stood.

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Not a Typical Union but a Union all the Same: New Unions Under the Employment Relations Act 2000

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Abstract

This paper reports on a small exploratory study of factors significant to the formation, and rapid proliferation of new predominantly workplace-based unions, or New Unions, under the Employment Relations Act 2000. Specifically, it examines the motivations and interests of workers who decided to form and join those unions and the role of other parties, notably employers, in that decision. Workers' dissatisfaction with and mistrust of existing unions were factors significant to their decision to form New Unions, while the role of employers was found to be less influential and less dominant than previously thought. Overall, this paper argues that New Unions may be a predominantly employee, not an employer, driven phenomenon.

Introduction

This paper reports on the formation and growth in New Zealand of new union organisations under the Employment Relations Act 2000 (ERA). To date, researchers have placed great emphasis on describing these newly formed unions and on comparing their structure, activities and character against that of older more established union organisations. Overall, newly formed unions have compared unfavourably to older unions leading some researchers to question the formers status as 'genuine' union organisations. A key element in these arguments are findings that suggest that New Unions as a group are incapable of operating at arms length from employers and are an employer-driven, not an employee-driven, phenomenon.

Researchers have focussed critically on (a) how New Unions operate, (b) the role of employers in their formation and operation, and (c) comparing their structure and activities against that of older more established unions. However, researchers have tended to overlook why those unions formed. Specifically, few researchers have addressed the motivations and interests of workers who formed New Unions and the process by which that decision was made. Some have linked workers' dissatisfaction with and possible opposition to the wider union movement to workers' decision to form New Unions (e.g., Barry & May, 2002). But beyond this, no direct or definitive examination has been provided on why workers choose to form, and subsequently join organisations that are, according to researchers, ineffective and unable to operate independently (e.g., Barry, 2004).

This paper addresses these and other questions by examining a small group of New Unions formed from 2000-2004 and the attitudes and experiences of employers and Old Union representatives who bargain with and operate alongside New Unions. It questions in particular why New Unions formed, the motivations and interests of

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workers who formed them, and challenges existing assumptions that they may not be genuine (or effective) union organisations. Existing research findings relevant to these questions are presented first, followed by a discussion of relevant results, points of convergence and divergence from prior research, and finally the implications of the paper's findings for future research are discussed.

The ERA and New Union formation

From 2000 – 2004, approximately 100 New Unions representing some 10,000 workers (see Table 1) were formed and registered under the ERA (Barry, 2004; Barry & May, 2002; Harbridge & Thickett, 2003; May, 2003b). The rapid growth and proliferation of this large number of new, predominantly small, unions diverged from international trends toward union decline, and the creation, by merger, of large conglomerate union bodies (Buchanan, 2003; Chaison & Rose, 1991; Freeman, 1989; Hose & Rimmer, 2002; Kuruvilla, Das, Kwon & Kwon, 2002). By 1st March 2004, New Unions made up approximately half of all registered unions in New Zealand but their membership represented only 2% of total union membership (Employment Relations Service (ERS), 2004). Despite their small size, the overall contribution of New Unions to union membership growth during this period was significant; approximately one third of all new union members registered under the ERA belonged to New Unions (ERS, 2004).

Although described as an unexpected consequence of the ERA (Barry, 2004) the formation of New Unions attracted only a modest degree of interest from researchers (Anderson, 2004; Barry, 2004; Barry & May, 2002; Barry & Reveley, 2001). The primary focus of this body of research has been on:

- the structure and activities of New Unions and on their possible impact on the existing union movement (Barry, 2004; Barry & May, 2002);
- their legitimacy or independence as organisations (Anderson, 2004); and
- the possible involvement of employers in their formation (Anderson, 2004; Barry & Reveley, 2001).

However, this same research has provided a paucity of data on why these organisations formed, workers' motivations for forming them, and the process by which the decision to form those unions was made. Rather, researchers paid greater attention to the question of whether New Unions were, or were capable of becoming, a genuine form of union representation (Barry & May, 2002), and to comparing them against existing definitions and empirical descriptions of the term 'union' and union character (e.g., Blackburn, 1967; Nicholson, Blyton & Turnbull, 1981; Webb & Webb, 1907). Key characteristics said to differentiate newly formed unions from these concepts were their:

- Non-affiliation with the New Zealand Council of Trade Unions (NZCTU).
- Enterprise-based membership (See Table 2).
- Lower membership fees.
- Enterprise-based bargaining agenda (Barry, 2004; Barry & May, 2002; May, 2003a & 2003b).

Table 1: Registration history & membership of unions in NZ as at 1st March 2003

Classification	Registration date	Number of unions	% of registered unions	Membership of unions registered during period	% of union membership
Old Unions	Prior to January 2000	83	47.4	324,892	97.2
New Unions	January 2000–March 2002	92	52.6	9,152	2.7
	TOTALS	175	100.0	334,044	100.0

Source: Employment Relations Service, Department of Labour

Based on these and other differences, New Unions as a group have been broadly defined as small, poorly financed organisations that are something less than a genuine form of employee representation (Barry, 2004; Barry & May, 2002). More specifically, researchers have voiced concern that New Unions fail the critical test of being a genuine union (Anderson, 2004; Barry, 2004; Barry & May, 2002), including the ability to act independently of an employer (Blackburn, 1967; Blackburn & Prandy, 1965; Prandy, Stewart & Blackburn, 1974). This implied lack of independence has been of significant interest to researchers, as has the role of employers in both the formation and operation of New Unions.

Table 2: Distribution of New Unions by membership rules as at 1st March 2003

Membership criteria	Restricted to single employer	Open to employees of any firm	Total
Restricted by occupation or position	20	9	29
Open to any occupation within a firm	41	20	61
TOTAL	61	29	90

Source: New Zealand Companies Office

New Unions and Employers

Doubts over the independence of New Unions as organisations has led researchers to argue that employers may sponsor or promote New Union formation as part of a wider decollectivist strategy (e.g., Peetz, 2002a & 2002b), possibly based on a New Zealand version of the company union phenomenon seen elsewhere (e.g., Jenkins & Sherman, 1979; Kaufman, 2000; Nissen, 1999). But outside of a few, possibly extreme, examples[†] (Anderson, 2004; Barry, 2004; Barry & May, 2001; May, 2003a & 2003b), little definitive evidence has been produced to show that this is a widespread phenomenon. Nevertheless, as argument it is one that has not been significantly challenged.

[†]Typically the Te Kuiti Beef-workers Union and the Warehouse People's Union

The key problem for this study is that none of the research addresses clearly the question why an employer would sponsor the formation of a New Union? More specifically, why would New Zealand employers consider it necessary and/or advantageous to do so? Undermining the collective bargaining efforts of more established or Old Unions is mooted as one reason (Barry, 2004; Barry & May, 2002; Barry & Reveley, 2001). But whether employers are deliberately pursuing this type of strategy is unclear. Research also suggests that in the previous legislative environment that was detrimental to unions, New Zealand employers are likely to forgo formal attempts at decollectivisation and rely instead on the legislative climate to achieve similar outcomes (Wright, 1997). While the restrictive legislative conditions to which these findings relate no longer apply, key aspects of the current legislative environment could be argued to have a similar decollectivising influence. Relevant factors include the proliferation of standardised employment agreements, and the passing on of union negotiated conditions to non-union workers, the absence of continued or sustained growth in union membership (Employment Relations Service, 2004; Waldegrave et al, 2003). In particular, the use of standardised employment agreements is a key facet of inclusive and exclusivist decollectivist strategies (Peetz, 2002a & 2002b) and many New Zealand firms would appear to routinely adopt such methods (Waldegrave et al, 2003). If this is the case, why then would New Zealand employers pursue the formation of company unions when other less overt forms of decollectivist strategy appear to be more effective under the ERA?

Workers and the formation of New Unions

The most significant omission from recent research has been an analysis of the motives and interests of workers who formed New Unions. Few writers - with Anderson (2004) being one exception - have questioned why workers would 'freely' choose to form, join and remain in organisations that could not and did not effectively represent their interests. Fewer still have questioned why workers would form, join and remain in organisations that lacked the ability to act independently of their employers. Empirical research into workers' unionisation decisions has consistently found that workers join and remain in unions in order to gain some advantage, typically an economic one (e.g., Freeman & Rogers, 1999; Tolich & Harcourt, 1999; Waddington & Whitston, 1997). If a union is incapable or unable (because of employer involvement) to offer such an advantage, why workers would choose to form, join and remain in New Unions is an important, but largely unanswered question. The only identified motives for workers' decisions to form New Unions are argued to be their dissatisfaction with the existing union movement or a desire for a cheaper form of union membership (Barry & May, 2002; May, 2003a & 2003b). But as catalysts of New Union formation, these factors have not been extensively examined by researchers. Consequently, empirical research has offered few, if any, explanations of why workers choose to form New Unions or of how that decision was reached. This is surprising given the impact New Unions are supposed to have on the union movement as a whole and the operation of the ERA (Barry, 2004; Barry & May, 2002; May, 2003a & 2003b).

Methodology

Focus of the Study

In examining the decision to form a New Union and the questions raised by the relevant literature, this paper sought to re-examine the phenomenon of New Union formation and asked "Why do New Unions form in New Zealand?" From this question, a sub-set of questions where examined

- Why do workers reject membership in other unions in favour of forming their own union?
- What role did employers' play in the workers' decision to form a union?
- What are the characteristics and definition of a genuine union?
- Are New Unions genuine?

Design

The study used a qualitative methodology based upon semi-structured interviews with a small, deliberately selected sample of representatives from three stakeholder groups. Those groups were:

- New Unions formed under the ERA.
- Employers whose workforces were partially covered by one or more New Unions.
- Existing, or Old Unions, that operated alongside one or more New Unions.

New Union Participants

New Union participants were deliberately selected from 92 such organisations registered with the Department of Labour as at 1st March 2004. Representatives of nine New Unions were interviewed, and, in a small departure from previous examinations of New Unions (Barry, 2004; Barry & May, 2002), participants actual level of involvement in the formation of their unions was identified. The research focussed on participants who were identified as either a founding member, or 'the' founding member of a particular union. Six participants were identified as founding members of their unions in this fashion.

Other Participants

Employers were identified by examination of the rules of registered New Unions, while Old Unions were identified by New Union participants who frequently detailed the other union organisations operating within their place of work. Representatives of three employers, whose workforces were partially represented by New and Old Unions, and three Old Unions, who operated alongside one or more New Unions, were interviewed by the study.

Limitations of the Study

A key limitation of this study was the small number of New Union participants interviewed and its ability to provide results comparable to the work of Barry (2004) and Barry & May (2002) that provided the only previous direct examinations of New Union formation. Barry & May (2002), for example, identified 64 of 158 unions registered as at 2nd October 2001 as New Unions, and interviewed 18 or 28% of

registered New Unions using a structured telephone survey. The current study interviewed a smaller proportion of both New Unions and registered unions in general. Only 12 out of the 174 unions registered as at 1st March 2004 were interviewed, including 9 of the 92 New Unions. The sample of 9 New Unions represented 9.8% of the all New Unions registered at that time. However, the study's small sample is considered defensible on the grounds that small samples are frequently used in qualitative research (Silverman, 2001), and are justifiable where they provide sufficient information to allow themes within the research to be fully developed (Fossey, Harvey, McDermott & Davidson, 2002). While the proportion of New Unions interviewed by the study was small, particularly in comparison to prior research (notably Barry & May, 2002), it is balanced by the:

- Use of semi-structured rather than survey-based interview methods.
- Depth of data generated by the interview process.
- Inclusion of other stakeholder groups.

A final limitation of the study was the deliberately selection of participants which would make it difficult to argue that its findings are applicable to New Unions as a whole. However, the study was able to balance the deliberate selection of participants against the need for a representative sample by including participants:

- From a wide range of industry classifications, including both the public and private sector.
- That varied considerably in size, in terms of employee and membership numbers.

In regard to New Union participants, the sample included organisations that were broadly comparable to New Unions as whole in terms of: size, membership rules, date of formation and industry distribution.

Results

Why did workers reject membership in existing unions in favour of forming their own?

Why workers join unions is a question New Zealand researchers have not examined as extensively as those internationally. A single New Zealand examination[2] of the decision to join a union (Tolich & Harcourt, 1999) compares rather unfavourably to the plethora of similar studies available elsewhere (e.g., Gani, 1996; Lahuis & Mellor, 2001; Waddington & Kerr, 2002; Wheeler & McClendon, 1991). New Zealand researchers have also avoided direct examination of why workers reject membership of particular unions and/or leave them. The closest comparable evidence comes from Australia where Peetz (1998) examined workers' decisions to join, stay in and exit unions in that country.

This paper found that the option of joining an established union was actively, and democratically, considered prior to workers' decision to form a New Union. In each instance workers choose to reject membership in another, principally older more established union because of their personal and shared experiences with those unions. More specifically, workers were found to be dissatisfied with the actions, attitudes and behaviour of the members, officials and other representatives of those unions. Responses typical of participants were:

> *"They weren't happy with the union reps they had, and if they had a really serious problem they found it could take a week to get someone who had any real teeth to actually deal with things."*

> *"I was 49 years old, I'd been unemployed for six months and two guys hopped on my bus the first week and said 'come and join this union so we've got solidarity and with solidarity we can smash the firm', and I said 'well this firms given me a job at 49 years old why would I want to smash them?' And that was their approach, and I will never, never join [that] union."*

Key characteristics with which workers were dissatisfied were: Old Unions' aggressive organising and bargaining tactics, poor service delivery, and perceived unwillingness and inability to represent their interests. Significantly, in rejecting membership in other unions, workers did not reject the idea or concept of collectivism, only membership of specific unions. Participants considered collective representation to be beneficial, but saw little or no benefit in belonging to existing organisations.

What role did employers' play in the workers' decision to form a union?

Employer responses to, and involvement in, New Union formation was described differently by each group of participants. The majority of New Unions in the study believed that their employer *supported*, but did not assist with, their decision to form. Employers indicated that they only *accepted* that decision, and their involvement was a matter of legislative compliance. Old Unions were contradictory, indicating both a strong belief in employer involvement in New Union formation, and a desire to believe that such involvement existed where it did not. Responses typical of these wide variations were:

> From New Unions
> *"They actually suggested I think they encouraged it…"*

> From Employers
> *"…we took a view that there was little point in prevailing against them, saying they shouldn't do this [as] it was their legal right to do so."*

> From Old Unions
> *"I don't think that employers are involved, even though that's what we'd like to think, it's just, I know that's what people are thinking…"*

Overall, employers were found to play a limited role in the formation of New Unions in the study. Employer involvement with these New Unions was found to more likely reflect an acceptance of workers' legal rights to form unions under the ERA, not a deliberate attempt to form a tame union or to undermine existing union organisations. Only in one or possibly two instances were such actions identified, with employers' following a pattern of behaviour described by existing research. Yet, evidence of actual or widespread attempts to form a tame in-house union with the intent of undermining existing union organisations was limited, as was evidence of New Unions gaining any form of advantageous relationship with their employer.

What are the characteristics and definition of a genuine union?

Participants defined a union as a collective organisation whose primary purpose was the representation of workers' employment interests; a definition broadly similar to that of Webb and Webb (1907). Participants did not provide a consistent definition or description of a genuine union. Rather, they identified characteristics critical to the character of the *typical New Zealand union* and how their unions and New Unions in general did or did not adhere to those characteristics. The typical New Zealand union was identified as an older organisation formed prior to the ERA, that:

- Represented workers across an industry or the country as a whole.
- Pursued interests that frequently diverged from those of employers.
- Pursued those interests through collective bargaining and other non-bargaining activities.
- Was affiliated with the NZCTU.

Of these factors, the pursuit of collective bargaining, independence from employers, and willingness to engage in militant or industrial action appeared most significant to participants' descriptions.

A number of additional characteristics were also attributed by New Unions and employers to the behaviour of the typical New Zealand union. The specific terms used to describe Old Unions were:

- Confrontational or positional.
- Untrustworthy.
- Antagonistic.

Responses typical of these descriptions included:

> From New Unions
> *"I see unions as pommy _____ who stand up and shout. That's the vision of me growing up in New Zealand, that feeling that unions were anti the bosses."*
>
> From Employers
> *"They [the New Union] have a very different approach to their relationship with the company than the other unions. What is different? They don't appear to be driven by any kind of national or CTU agenda."*
>
> *"It's the trade off mentality or a positional mentality."*

Consequently, participants' descriptions of the typical New Zealand union were broadly comparable to the concept of union character used by previous research into New Union formation (Barry & May, 2002), as well as to existing definitions of the term union.

Are New Unions genuine?

Despite each participant group sharing a common definition of the *typical New Zealand union*, the question of whether their unions (in the case of New Union participants) or New Unions in general were genuine was more difficult to answer. Participants seemed to describe New Unions in the same way, but differed on whether they were, in fact, genuine unions. New Unions were described in a similar fashion to existing research

(e.g., Barry, 2004; Barry & May, 2002) with participants in the study noting features such as their enterprise-based membership, and narrower bargaining agenda. However, when describing New Unions, participants gave greater weight to describing *how* they operated rather than what they did and how they were structured. In relation to the concept of union character, participant responses gave weight to previous claims that the concept had little application to New Unions (Barry, 2004). Key facets of union character that New Unions were not found to adhere to were:

- The willingness to engage in militant action.
- Affiliation with the NZCTU.
- A willingness to declare themselves to be a union.

Participants also identified a strong divergence between New Unions and their definition of the typical New Zealand union. Significantly, how they did so also appeared more significant to participants than New Unions' adherence or non-adherence to the academic concept of union character. Key factors said to differentiate New Unions from the typical New Zealand union were argued to be their:

- Pursuit of enterprise rather than industry and national level collective bargaining.
- Unwillingness or inability to engage in militant action.
- Unwillingness and inability to pursue activities outside of collective bargaining.
- Unwillingness and possible inability to pursue interests that diverged from those of their employer.
- Pragmatic and cooperative rather than confrontational relationships with employers.

Responses typical of these descriptions included:

> From New Unions
> *"I see us [the New Union] as a group of people working together rather than a group of people with our fists out fighting together."*
>
> *"Well I don't think we do a hell of a lot that's different but we do communicate perhaps a little better."*
>
> From Employers
> *"In many ways they have more of a partnership relationship with the business than a positional or adversarial relationship."*
>
> From Old Unions
> *"I don't see them as a reputable union. We see them as just basically bargaining agents they don't do the things that proper unions do. They're there to negotiate the agreement then they're gone basically."*

On the basis of these findings, the New Unions identified in this study would appear not to be genuine unions as they do not adhere to either the concept of union character or participants' descriptions of the typical New Zealand union. Conversely, however, when asked whether those unions were genuine, both New Unions and their employers stated that they were. Only participants representing Old Unions argued against defining New Unions (particularly those with whom they had contact) as genuine, placing significant emphasis on two key characteristics attributed to those organisations:

- The presumed lack of independence, and
- The pursuit of a purely enterprise-based agenda.

The first characteristic was argued to be derived from New Unions' reliance upon free-riding to secure a collective agreement, and their inability to pursue a confrontational relationship with employers. Old Unions regarded both as indicative of New Unions' dependence upon employers for their long-term survival. In describing the second, Old Unions did not dispute that many New Unions bargained collectively, which is a key facet of union character (Blackburn, 1967). They argued, however, that this did not make them genuine unions as how they bargained was not sustainable and an ineffective method of representing workers.

New Unions and employers, however, placed less emphasis on the level at which they bargained and operated, and focused more strongly on the basic purpose of those organisations. This was defined by both groups as the simple representation of workers' employment interests, a definition similar to Webb and Webb (1907) and an organisational objective that does not differ from that of other unions. Overall, New Unions argued that they were genuine but distinctly different to organisations typical of the New Zealand union movement. These differences, while significant, did not prevent those unions from being regarded or from operating as genuine independent union organisations.

Responses typical of these descriptions included:

> From Employers
> *"The only thing we struggle with its like having two children, the eldest [The Old Union] and the youngest [the New Union] child."*
>
> *"The histories of the two are very different. We have a lot less misunderstanding and contention between the firm and them [the New Union] because they are a bit more mature, more responsible, and less prone to being opportunistic in their approach."*
>
> From Old Unions
> *"The members say don't call them a union, the members hate them, they hate the idea that they are calling themselves a union – the membership hate them because they are users you see."*

Findings of this study also suggested that the attitude of Old Unions toward New Unions may be determined, not by the character of the New Unions, but whether they compete with them for members. All three groups of participants highlighted the significance of competition for members to the type of inter-union relationships they experienced. In workplaces where New Unions and Old Unions represented, and therefore competed for, the same group of workers, these relationships were predominantly confrontational and at times openly hostile. Where relationships were hostile participants were more likely to argue that New Unions were not genuine unions. In workplaces where New Unions and Old Unions did not compete for members, inter-union relationships were predominantly neutral with minimal contact between each group. In these circumstances, there appeared to be less opposition by representatives of Old Unions toward the newly formed organisations.

Discussion and Conclusion

This paper found that New Unions formed to represent the specific collective employment interests of small groups of workers, typically employed within a single workplace, through the process of collective bargaining. Workers' decisions to form a New Union, rather than join an existing union, represented a deliberate decision to reject membership in the established union movement. That decision resulted from workers' personal and shared experiences, and strong dissatisfaction with, the behaviour and attitudes associated with Old Unions, their officials and members. In general, the studied New Unions formed because workers desired membership in a collective organisation that would not repeat their personal experiences with other unions.

Employer's role in the formation of New Unions in the study was less active and significant than was expected from prior research (Anderson, 2004; Barry, 2004; Barry & May, 2002; Barry & Reveley, 2001). Specifically, no evidence was found of widespread attempts by employers to sponsor or create a tame or company-type union. Evidence was found, however, of possibly isolated incidents, similar to those reported in existing research. Overall, this study found that employer support for New Unions could be more appropriately described as an acceptance of workers' legal right to organise. It was probably also influenced by an employer preference for the type and style of bargaining that New Unions was expected to pursue.

The question of whether New Unions were genuine was harder to resolve. Each group of participants provided a broadly similar description of the *typical New Zealand union* and of the characteristics of the *typical New Union.* Participants differed however, on whether New Unions as a group were genuine. What was more evident was that participants saw strong differences between how new and old unions operated, if not their central purpose or character as organisations. This study, like previous research (e.g., Barry, 2004), did find that the concept of union character was not applicable to New Unions. However, this study's findings suggest that this did not prevent many participants, and significantly the workers who formed and joined New Unions, from viewing New Unions as anything other than genuine union or more accurately collective organisations. Findings also suggest that inter-union competition for members may be more significant to how participants defined New Unions, than the actual character of those organisations.

Overall, if we assume that these findings are applicable to New Unions as a whole, and not solely representative of this small group, then these findings have some practical implications for a number of stakeholders, the New Zealand union movement and older more established unions in particular. For these organisations, the deliberate and free choice by collectively-minded workers to reject them is a sign of the problems they face in rebuilding under the ERA. Slow union membership growth and poor membership retention rates will not be helped by suggestions that in some workplaces unions' own organising efforts, officials and members have served to deter people from joining the union movement. Amongst employers with similar attitudes to those in this study, Old Unions' efforts at building constructive partnerships with employers and at multi-employer collective bargaining may be hampered by suggestions that they are seen as antagonistic, overly militant and untrustworthy. Both situations suggest that unions need to take greater care in how they build and maintain relationships within New Zealand organisations.

For researchers, this study, while small in scope, suggests strongly that New Unions and union membership may have been an under-explored phenomenon in this country. Why workers join unions, what they believe unions are, and how they choose between unions are questions critical to any understanding of union membership trends. It is surprising, therefore, that these questions are often left unexplored or are given less attention than the wider examination of unions as organisations. The findings of this study suggest that the unionisation decisions of New Zealand workers need to be examined in more detail, and perhaps a side by side comparison of the motivations and interests of the members (rather than the secretaries) of Old Unions and New Unions provided.

The great weight given to comparing New Unions against organisations that have evolved over several decades also highlights the inadequacies of existing definitions of the genuine union. The concept of union character used, in part, to separate New Unions and Old Unions is in itself incapable of stating that an organisation is or is not a union (Gall, 1997). Yet this is the very manner in which researchers appear to have used the concept when examining New Unions. Perhaps a more appropriate method would have been to compare the character of New Unions against that of Old Unions of a similar age - in other words, to the character of Old Unions when they first formed.

These findings also suggest that more needs to be done to identify how workers, rather than academics, identify, describe and define unions. They raise the question of what type of organisations workers believed they were forming when they created a New Union. The results show that some workers believed they were forming something distinctly different to the typical union. However, given the small number of New Union members interviewed, it is difficult to state this as a certainty, particularly as participants frequently saw little or no difference between what their organisations were formed to do, and why other unions formed.

Finally, academics may have been too quick to judge the character of New Unions. While they have argued that some are genuine forms of workplace representation, they have been strong in their general criticism of these unions and in accepting existing research findings. These have predominantly implied that New Unions are an employer-driven phenomenon, or at the very least incapable of becoming effective unions. That workers in this study do not seem to think so, and that employer support may only exist in a few isolated cases, questions previous findings (notably Barry, 2004 and Barry & May, 2002) and argues for additional research into New Unions and further examination of employers' attitudes toward and response to unions under the ERA. More importantly, it would be of some benefit to see whether the findings of this study could be replicated among a larger group of similar participants.

Notes

* Information based upon personal communications with representatives of the Registrar of Unions, November – December 2003.

2 Subsequent to the completion of this study several articles have added to this particular body of research in New Zealand. The work of Haynes, Boxall & Macky (2004 & 2006) and more recently Boxall, Haynes & Macky (2007) stand out for their examination of workers motivations for union membership and the factors that have contributed to union decline in this country. Of key interest are their identification of a strong untapped demand for union membership in New Zealand (Boxall et al, 2004) and the implications of this demand for New Zealand unions organising efforts.

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Minimum Wages in the Asia Pacific Region

Michael Barry[*] and Peter Brosnan[**]

Abstract

Modern minimum wage systems have operated for more than a century. Some Pacific countries were among the pioneers in establishing minimum wages. Minimum wage systems are used to achieve many aims, some of which conflict. These aims include promoting social justice, alleviating poverty, promoting economic development, setting benchmarks for other wages and social security payments, and controlling inflation. The Asia Pacific region has only a small number of countries with adequate minimum wage systems. There are many deficiencies in the various systems. They often do not cover all workers, are often set at unrealistically low levels, or are enforced inadequately.

Introduction

Minimum wage laws are a common feature of industrial relations systems in many countries. The main ILO convention on minimum wages, ILO Convention 26, has one of the highest ratifications by national governments. When this convention was adopted in 1928, the ILO's concern was to provide 'fair wages' and ensure that global trade was not based on cheap labour. These are still key reasons for being concerned with maintaining adequate minimum wage systems, but other concerns have been addressed through minimum wage machinery too. These aims sometimes come into conflict with one another, which puts minimum wage systems in most countries under strain. The forces of globalization put further pressure on the minimum wage systems in both the developing countries and the advanced countries.

This paper examines some of these issues within the context of the Asia Pacific region. The main sections of the paper deal in turn with the history of minimum wage systems, the position of minimum wage systems within international law, the different objectives loaded onto minimum wage systems, the different forms of minimum wage system in practice, and a brief overview of minimum wages in the Asia Pacific region. The longest section of the paper addresses the problems of implementing effective systems: the issues of coverage, level, compliance, the pressures of globalization, and the role of the social actors, particularly government.

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Origins and Early History

The concept of a fair wage or a minimum rate for particular occupations is not new. Mesopotamia's Hammurabi Code of 2000 BC (Starr, 1981) is probably the earliest intervention of this kind. The Statute of Apprentices introduced a system of minimum wages in England in 1563 and the guilds which operated in China, Korea and Europe also set wages in earlier periods. Modern laws providing for systems of minimum wages were first enacted in New Zealand in1894 when the Industrial Conciliation and Arbitration Act provided for the system of industrial and occupational awards that set minimum rates of pay and bound all employers in the relevant industries. Similar systems were set up in Australia shortly afterwards.

Other Pacific-rim countries were pioneers in minimum wage fixing too. The state of Massachusetts introduced a statutory minimum in 1912. This legislation gave protection to minors and females. Nine other US states followed suit over the next decade, as did most of the Canadian provinces. A federal minimum wage was introduced in the USA in 1938, although overage was limited initially. European countries introduced minimum wage legislation in the first decades of the twentieth century, mainly to protect homeworkers (Starr, 1981). These experiments, in common with the systems established in New Zealand and Australia, guaranteed minimum wages for the workers covered, but fell short of being national systems of minimum wages. Minimum wage laws with broad coverage were implemented much later. For example, New Zealand did not introduce a national minimum wage until 1945, 51 years after it had introduced industrial and occupational minima.Although European countries were notably active in legislating for minimum wages, a remarkable spread of other countries acted. Australia still has an incomplete coverage; there is no federal universal minimum wage, but all the states except NSW and Tasmania legislated in the last decade or so to guarantee minimum rates of pay. European colonies in Africa and the Caribbean had minimum wage laws introduced by the colonial powers. Latin American countries, influenced at least in part by papal pronouncements on the rights of working people (Starr, 1981), were among the first to legislate for a statutory minimum wage. Peru introduced minimum wage legislation in 1916 and Mexico introduced a statutory minimum wage in 1937 to reflect a guarantee of the 1917 Constitutionprovide state-wide guaranteed minimums.

Australia still has an incomplete coverage; there is no federal universal minimum wage, but all the states except NSW and Tasmania legislated in the last decade or so to guarantee minimum rates of pay. Today about 180 countries have some form of minimum wage. A minimum wage tends to be a correlate of economic development. Minimum wage systems are less common in very small countries such as the micro states of Oceania and in less developed regions. Minimum wage legislation is most common in Africa where 48 out of the 57 countries have a minimum wage. Europe also has a large proportion of countries with minimum wages, but countries such as Italy, Germany and Norway have no statutory minima. Instead they have extensive collective bargaining and a system whereby collective agreements are automatically extended to other firms in the same sector, thus most workers have a guaranteed legal minimum despite their being no general minimum system in place.

Minimum Wages and International Law

The obligation on governments to provide for a system of minimum wages is rooted in international law. *The Universal Declaration of Human Rights* (1948) asserts 'the right to just and favourable remuneration' (Article 32(2)) as does the UN's *International Covenant on Economic Social and Cultural Rights* (1966) (Article 7). The *Declaration of Philadelphia* (1944) which redefined the aim and purpose of the International Labour Organization (ILO) identified the guarantee of adequate wages as a task of government.

ILO Conventions 26 (1928)[1], 99 (1951)[2] and 131 (1970)[3] relate to minimum wages. Convention 26 obliges governments to create minimum wage fixing machinery where 'no arrangements exist for the effective regulation of wages … and wages are exceptionally low' (Article 1, para 1). Convention 99 covers minimum wages in agriculture. Convention 131 is focussed on the 'needs of developing countries'. While the Conventions do not specify the level at which minimum wages should be set, Recommendation 30, which is intended to be a guide to Convention 26, states that minimum wages should be set according to 'the general level of wages in the country' (Section III). Convention 131 states that the level of the minimum wages should be 'appropriate in relation to national practice' and include '(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment' (Article 3).

Minimum Wage Systems in Operation

ILO Convention 26 was adopted only nine years after the ILO had been founded. The aim of the convention was twofold: one the one hand, to provide wages that were fair to the worker and which reduced the risk of poverty, and on the other hand, to make international trade fair by preventing economic dumping whereby a country used low wages to gain a cost advantage in trade. Today minimum wages play many and different roles in different countries. These different roles frequently conflict, and as we shall argue below, constitute one of the critical weaknesses of minimum wage systems. Minimum wage can be called upon to fill at least six different roles (a) to reduce poverty, (b) to improve equity, (c) to stimulate economic development, (d) to regulate wages in general, (e) to set rates for social security benefits, and (f) to fight inflation.

Combating Poverty

It is axiomatic that a higher minimum wage will mean less poverty. This was the motivation behind the Indonesian Government's decision to introduce a minimum wage in the 1970s. The government, employers and unions had agreed that a minimum wage was needed to prevent a deterioration of the lowest wage level and to improve the standard of living (Ghellab, 1998)

Despite the unsurprising finding that that low pay is less common where there are minimum wage laws (Ioakimoglou and Soumeli, 2002) some argue that a minimum wage

does little to relieve poverty since many of the poor are not in regular employment (e.g. Johnston and Stark, 1991; Standing, 1999), or that some of the lower paid belong to well-off households. This latter observation, however, is not a reason to permit low pay. It is a consequence of low pay**.** One of the main reasons the US minimum wage is relatively ineffective in reducing poverty is just that it is set so low (Pollin and Luce, 1998).

It is true of course that a decent minimum wage is not the only way alleviate poverty. The effectiveness of a minimum wage in alleviating poverty will depend on the tax system and the availability of additional social security benefits. This implies that a minimum wage is more important in developing countries where low income families are less likely to have additional sources of income such as social security payments (Lustig and McLeod, 1997). Moreover, given the distribution of income, more workers are likely to benefit from an increase in the minimum wage in developing countries than in developed countries (Saget, 2001).

Promoting Justice

Low pay is a consequence of the way that labour markets are structured. Some jobs are socially constructed as deserving relatively low pay. At the same time, some categories of workers are less preferred by employers, or are in circumstances which prevent them applying for the better jobs. Thus, the preferred categories of worker get the better-paid jobs while the others have to compete for the jobs that are left – the poorer-paid jobs. Consequently 'workers with … equal skills and abilities are available at widely different prices' (Wilkinson, 1984, p.422). The categories of worker who are less preferred tend to be women, racial or religious minorities, people with less education (even if education is irrelevant for the tasks to be performed) and other 'socially disadvantaged' groups. Foreign workers are particularly vulnerable; they are often driven to migrate on account of the low pay and high unemployment in their home country and are prepared to 'work cheap' in their new location. Their situation highlights the need for decent systems of minimum wages in all countries, so that people are not forced to migrate for economic reasons, and should they choose to migrate, they will receive an adequate wage in their new country.

These arrangements are clearly unjust in that many workers have to accept low wages. But it is also unjust in that the better paid within the same labour market benefit from the cheap labour of the low-paid. They benefit from cheaper services where they employ the low-paid directly. They also benefit if products or services they buy are 'subsidized' by low pay. Workers and other consumers in the advanced countries benefit too from the low pay of workers in the developing countries whose wages are much lower than theirs and whose products are priced correspondingly lower. Thus minimum wages are essential to reducing inequities within and between countries.

It has been suggested (Brosnan and Wilkinson, 1989) that groups that are most likely to be low-paid will be the principal beneficiaries from the introduction of a minimum wage or any increase in an established minimum. Thus improving minimum wages would assist in attaining equal pay for work of equal value. It changes the income of a

substantial proportion of women each time the minimum wage is increased. A realistic minimum wage should therefore be an integral part of any campaign for equal pay.

Stimulating the Economy

The advantages of a minimum wage system to the economy have been posited for at least a century (e.g. Webb and Webb, 1920). Wilkinson (1984) has argued that a realistic minimum wage alters the terms of trade between different productive systems, and making it more difficult for disadvantaged firms to rely on disadvantaged labour, thus forcing firms to become more efficient, by investing in better equipment, better methods and in the training of their workforces (Cahuc and Michel, 1996). At the international level, countries with higher minimum wages will have fewer inefficient firms and therefore be able to compete.

The other benefit is that the higher minimum boosts consumption spending. Workers on the minimum wage are likely to spend all of their wage (Borooah and Sharpe, 1986), and spend more of it on domestically produced products (Borooah, 1988). Thus an increase in the minimum wage would add more to domestic demand than an increase in pay at other points in the income distribution.[4] This strategy was followed by the Mexican government in the period before 1976 but, as we shall see below, the approach fell foul of other policy objectives (Grimshaw and Miozzo, 2002).

Setting Social Welfare Levels

The minimum wage's role of providing an income that is both fair and sufficient to combat poverty leads to it being used as a numeraire for social welfare payments. Thus in some countries, again Mexico being an example, the minimum wage is used as basis for setting pensions. It is also used to set unemployment benefits and dismissal compensation (Grimshaw and Miozzo, 2002).

Giving a Lead to Other Wages

Our observation above that minimum wages are intended to provide a fair wage leads to employers using them as a benchmark for fair remuneration. The USA's minimum wage being increased so rarely, it provides an opportunity to see how other wages are affected by an increase in the minimum. In that country a rise in the minimum wage is followed by further rises in wage rates above the minima as employers reinterpret what they consider a fair wage. Maloney and Nuñez (2002) report on an even stronger case of this in Latin America - what they term the 'numeraire' effect. They note that in some Latin American countries some well-paid workers receive an exact number of minimum wages as their salary. They further note that the effect of an increase in the official minimum wage translates into wage increases at higher levels, in Latin America - at levels up to four times the minimum wage. This is considerably higher than the USA where the effect dies off more quickly.

Controlling Wages and Reducing Inflation etc

Grimshaw and Miozzo (2002) observe that direct state control of wage fixing has been a conspicuous policy in Latin America. Collective bargaining itself has been controlled and the growth in the minimum wage has been held back in an attempt to stabilize wages and prices. As a consequence, most Latin American countries experienced a decline in the real minimum wage over the 1980s and 1990s (Grimshaw and Miozzo, 2002). Their data indicate that of the Latin American countries that border the Pacific, only three - Chile, Ecuador and Panama - increased their real minimum wage during the period 1990-1995. In the last four years however, Guatamala, Honduras, Colombia and Chile have increased their minimums by more than 50 percent.

Forms of Minimum Wage Laws

A total of 104 countries have ratified ILO Convention 26. However, the convention allows for a wide variety of practices and few countries have a minimum wage system that applies to every worker. The various arrangements can be grouped into eight categories:

(a) a statutory national minimum wage with full application (e.g. New Zealand),

(b) a system of statutory regional minimum wages with full application within each region (e.g. Canada, Thailand),

(c) a statutory national minimum wage with exemption for certain industries or workers (e.g. South Korea, USA),

(d) a system of statutory regional minimum wages with exemption for certain industries or workers (e.g. Japan),

(e) a national minimum wage negotiated through collective bargaining but with full, or near full, coverage (e.g. Greece, Belgium, Finland),

(f) selective intervention with orders that provide for specific legal minima in certain industries or occupations (e.g. Australia),

(g) reliance on collective bargaining but with extensions of collective agreements to other workers (e.g. Germany and Italy),

(h) combinations of (a) to (g); e.g. a statutory minimum wage with full application which acts as a floor, but additional higher minima in certain industries or occupations (e.g. Mexico), or a national minimum with a higher minima in some regions (e.g. USA).

(i) no official wage but a strong tradition which establishes a going rate (e.g Kiribati)

Some countries also provide higher minima according to a workers experience or qualifications. A substantial number of countries have lower rates for young workers (e.g. Papua-New Guinea, New Zealand, USA), although these rates have become less common in recent years (*OECD Employment outlook* 1998)

Minimum Wages in the Asia Pacific Region

Table 1 sets out mean hourly minimum wage rates for the Asia Pacific region and the rest of the world, converted to New Zealand dollars at the average exchange rates for the 12 months up to the end of October 2006. The averages in Table 1 are computed only for those countries that have a positive minimum wage rate. The average for Asia Pacific, at NZ$2.31, is only half the world average of NZ$2.64. These average data, however, hide wide variations within them. Oceania has a higher average of NZ$4.51, Asia's average is NZ$1.10, while in the Latin America countries that border the Pacific, the average is only NZ$1.14. These regional averages also hide variation. If we were to exclude Japan, the Asian average would fall to NZ$0.84, not much more than Latin America's. The table includes data for Europe, and we can see the substantial difference between Asia Pacific and Europe: NZ$2.31 compared to NZ$10.78. If we exclude the 'rich' countries of Asia Pacific - Canada, USA, Japan, New Zealand and Australia - the remainder of Asia Pacific has an average minimum wage of NZ$1.59.

We noted that these data are only for countries that have a positive minimum wage. Bearing in mind that Asia has a lower proportion of countries with a minimum wage, if we include the countries without a minimum in the average, the mean for all Asian Pacific countries reduces to NZ$1.21, less than two-thirds the corresponding average for all countries, which stands at NZ$2.07 .

Table 1: Average Minimum Wage[(a)] by Region

Region	Minimum Hourly Wage Rate (NZ$)
Mean Asia Pacific	2.31
Mean rest of world	2.81
Mean world	2.64
Mean Western Europe	10.78
Rest of world without Europe	1.67
Asia Pacific without Canada, USA, Japan, New Zealand, Australia	1.59

Source: *Database held by second author. Details and primary sources available on request*.
Notes: *(a) Data current at 1November 2006.*

Problems in Implementing Minimum Wage Systems

There are many problems in managing a minimum wage system. To be effective the minimum wage must cover all the labour force, it must be adjusted to a level that ensures that no one is low-paid, and it must be enforced. While these requirements pose problems in their implementation, there are additional features that undermine the system: the pressures produced by globalization, lukewarm support from the social actors, and the conflicting objectives which governments impose on minimum wage systems.

Coverage

Minimum wage systems can only be effective if they cover the workers who are likely to be low-paid. Illegal workers usually lie outside the protection of the law. Thus if they are not entitled to work, they are not entitled to the minimum wage.

The arrangements vary substantially across nations. In some countries the minimum wage only applies to the private sector. Small firms may be excluded from coverage. Some countries have different rates for blue-and white-collar workers, some different rates for qualified and unqualified workers. Some countries have an experience requirement or different rates for trainees. Some countries exclude particular categories of worker or grant them a lower rate. Some countries exclude young workers. Regional variations within countries are not uncommon; Mexico, Canada and Japan have different minimum wages for different regions. Australia constitutes an unusual example within the Asia Pacific region; indeed within the world, in that four of the six states have statutory minimum wages while the federal territories, Tasmania and the largest state, New South Wales, have no minimum; instead workers in those regions have to rely on the extensive, but nonetheless piecemeal, system of awards.

In the developing countries of Asia, the group that most needs a guaranteed minimum wage is persons employed in the informal sector. Conditions in the informal sector are difficult to police. Furthermore, informal sector workers may work outside established legal frameworks and may not be entitled to statutory minima. While the informal sector in the advanced countries employs between 2 and 15% of the labour force (Standing,1999 p.112), the ILO (1997) estimated the share in developing countries at between 30% and 80% of the labour force. It further estimated that the informal sector employs 61% of the urban labour force in Africa and will have generated 93% of new jobs in the 1990s. The proportion is lower in Asia, at around 40-50%, but ranges from 10% in the most developed countries of Asia to comparable figures to Africa in India and Bangladesh (ILO, 1997).

Level

Most countries that have a minimum wage have it set at levels that are inadequate for meeting basic consumption needs. Of the 178 countries that have some form of

minimum wage, only 52 have a minimum which is greater than NZ$2.00 an hour. Some 89 have a minimum of less than NZ$1.00 an hour.

Although the ILO has adopted three conventions on minimum wages, they offer little guide as to what is a reasonable level. The associated Recommendations do make reference to living standards, prevailing wages etc, but the wording is deliberately vague. The intention is that minimum wages must meet the cost of living but it is often the case that the minimum wage comes nowhere close to that objective. As an example, the minimum wage in Nicaragua meets only one third of the cost of living (Tabb, 2002).

A crucial issue is whether or not the minimum wage is adjusted regularly. There are many different ways that governments adjust their minima:

(a) legislation or decision of the Executive (e.g. Canada, New Zealand, USA),

(b) government on the recommendation of an independent review body (e.g. Japan, South Korea),

(c) independent authority (e.g. Australia, Mexico),

(d) indexation to the CPI (e.g. France),

(e) indexation to average wages (e.g. Netherlands),

(f) other formulae (e.g. Poland).

The minimum wage is unstable in many of the developing Asia-Pacific countries because of the irregularity of the review process or the conflation of the needs of the working poor with other considerations. Some countries in the region have regular review processes in place, e.g. Costa Rica and Colombia, although the effects on employment and on 'competitiveness' are often considerations. Consequently, the value of the minimum wage can fall easily into the range where it fails to meet basic consumption needs. Saget (2001) reports that minimum wages in Latin American countries lost 30% of their value between 1980 and 1990.

The instability of minimum wages in Latin America result from policy see-saws whereby the minimum wage is adjusted upwards at one time to combat poverty, and held back at others to attempt to control inflation. This is particularly noticeable in Mexico whereby the minimum wage was used as an instrument to redistribute income and stimulate demand before 1976, but used as a tool to fight inflation in the period that has followed (Grimshaw and Miozzo, 2002). The Mexican minimum wage decreased 45% during the 1980s. On the other hand, it increased in Colombia by about the same percentage (Saget, 2001).

Minimum wages fell in some Asian countries too. The Philippines experienced a continuous decline in the real value of minimum wages in the 1980s and into the 1990s. On the other hand, Thailand increased its minimum in real terms from the 1980s in to the 1990s (Saget, 2001).

The more advanced countries of the region with more stable economies suffer declines too, especially when conservative governments choose not to adjust the minimum. The US minimum wage buys no more than two-thirds what it did in 1968, and it was not adjusted at all between January 1981 and April 1990. Lee (1999) attributed most of the growth in inequality that occurred in the United Sates during the 1980s to the decline in the real value of the minimum wage during the Reagan years. Similarly in New Zealand, National Party governments' neglect of the minimum wage allowed it to decline by almost a half between 1954 and 1984 (Brosnan and Wilkinson, 1989).

One final consideration in relation to the level of the minimum wage, is the period to which it applies. Given that minimum wages are usually intended to guarantee minimum levels of consumption, they are usually set as a minimum per pay period (weekly or monthly according to country tradition) or as a minimum per hour. The disadvantage of this latter approach is that it may not provide for part-time workers (Saget, 2001), who are becoming an increasing proportion of the labour force in some countries, and who also need an adequate wage to maintain the consumption levels of their household.

Compliance/enforcement

No matter how high the minimum wage rate is, nor how extensive its coverage, it will be ineffective if employers offer wages less than the minimum. Compliance is a serious problem in all countries. Possibly no country has a large enough inspectorate to enforce the minimum wage, and many countries have no inspectorate at all, relying on complaints from workers or trade unions. The problem of enforcement is compounded where unionism is banned or severely curtailed. The pressures of globalization, which we highlight below, are another factor that weakens unionism and potentially reduces the degree of compliance.

There are regimes that are unwilling, or incapable of enforcing workers' rights, whatever the law may say. Many countries seem to have a minimum wage which is mere window dressing; they are unable to provide information about the minimum wage - the proportion of workers covered, the degree of compliance, or its impact on particular population sub-groups such as youth, women etc.

Even in Colombia, which stands out as a Latin American country where the real minimum wage has increased in recent decades, 25% of workers are paid less than the minimum (Maloney and Nuñez, 2002). The reason for this is that 'a high share of new jobs in the developing world are nowadays created in the informal sector where the minimum wage is weakly … enforced' (Saget, 2001, p.1). Studies indicate high levels of non-compliance in many Asia Pacific countries: 54% in Guatemala, 9% in Chile, and 15% in Indonesia, with low levels of compliance in the Philippines which has no penalties for underpayment. Non-compliance is a particular problem in small firms. A Latin American study quoted by Saget (2001) reports that 63% of workers in 'micro-enterprises' in Costa Rica were paid below the minimum wage. The corresponding percentages were 46% in Panama, 28% in Chile and, 19% in Mexico and 16% in Colombia.

There is a relationship between the level of the minimum wage and degree of compliance in that a lower minimum wage makes compliance more likely (Lustig and McLeod, 1997). For that reason, it may be politic to introduce minimum wages initially at lower levels then gradually increase them to more realistic levels so that the concept becomes accepted and then compliance becomes more likely when a realistic level is attained.

Pressures of Gobalization[5]

Of the many differences between developing and advanced countries, few are as spectacular as the differences in wages. Even within each of these groups, there are vast differences. Labour compensation costs in New Zealand are only a quarter of those in the US (US Department of Labor, 2002). The wages of a factory worker in Shenzhen is only half that of a worker in Bangkok (Bende-Nabende, 1997). Hidden behind these differences are further differences in productivity between enterprises, and differences in wages between categories of worker within enterprises. The minimum wage, globalization and local labour markets interact differently in the developing countries - particularly those in the Asia Pacific region - and the advanced countries.

Lack of Support from the Social Actors

The preceding sections give us some clues as to how the social actors might view minimum wage systems. Employers tend to be divided over the issue according to their own position within the pay structure. Employers in labour-intensive workplaces that rely on cheap labour for their survival and profitability tend to oppose minimum wages in general, and resist any increase in existing minima. On the other hand, employers in more capital-intensive firms that pay better wages may welcome minimum wage systems and, furthermore, see them as protection from competition from less efficient firms that rely on cheap labour.

Trade unions are often supportive of minimum wage systems. The minimum wage provides a floor for collective bargaining, and it meets the social objective of providing for workers with limited bargaining power and who are unable to organize. Thus trade unions generally lobby for minimum wage systems, and argue for higher levels of the minimum where one has been established. However this is not always the case. For example some trade unions resist the idea of a standard national minimum believing it undermines collective action.

Whatever the views of employers and unions, the government is the key player in effective minimum wage systems. Governments, directly or indirectly determine the level of the minimum wage, they determine whom it should cover, and they provide the resources for its enforcement. Given the number of ratifications of the ILO conventions on minimum wages, it could appear that governments in general agree with the concept. However, some governments whose countries have ratified the conventions, such as Fiji, have no minimum wage in place. Many have defective minimum wage systems or have even abolished minimum wage systems that had been set up. For example, Papua-New Guinea introduced minimum wage legislation in 1972, scrapped it in 1992, reinstated it but has kept rates low - currently 37.5 Kina per week (NZ$20). During 2001, the Papua-

New Guinea Minimum Wage Board recommended a large increase, but the government blocked it, and no increase was implemented

There are several reasons why governments are reluctant to establish and maintain effective minimum wage systems: fear of inflation, concerns about the fiscal impact, and the unease over the possible employment effects, the latter often fuelled by international agencies. We have argued before that the possibility of general inflation following a minimum wage increase is not strong (Brosnan and Wilkinson, 1988). Inflationary effects may be offset by increased productivity (Hughes, 1976) or a reduction in profits. An important factor will be the extent to which higher paid workers successfully restore differentials disturbed by the higher minimum wage. However labour markets are segmented such that better paid workers are unlikely to be making comparisons with workers whose pay is so low to be on the minimum wage (Brosnan and Wilkinson, 1988). Perhaps most importantly, the globalization processes described above, have severely weakened the ability of trade unions to respond to changing differentials, should they wish to do so.

Governments are not unaware of the effects of the minimum wage on their fiscal position, particularly where government employees are on minimum wage rates, or where the government employs contractors who pay minimum wage rates. A further concern is where social security benefits or pensions are linked into minimum wages. Concern with similar issues underlay the IMF's threat to Russia, that it would block a scheduled loan if the minimum wage were increased (Standing, 1999).

A prevailing unease on the part of governments is the relation between the minimum wage and unemployment. The argument, derived from simplistic economic theories, is that with higher minimum wage rates, fewer workers will be hired. (for discussion see Brosnan, 2002). A similar claim is made with respect to youth employment - imposing a minimum wage for youth (or a relatively higher one where one exists already) would lead to lower employment rates for youth to the benefit of non-youth workers. The story is told most strongly in the US, but has been critiqued even within the economics establishment (Card and Krueger, 1995). Although these propositions have been tested in various countries, the results are never conclusive. Regression coefficients are frequently not significant, or the predicted relationships are found not to exist. Where there does appear to be a relationship, other factors are frequently responsible (see Ghellab, 1998). Nonetheless, countries still hold wages down in fear of unemployment.[6]

Conclusion

Minimum wage systems are not particularly robust in the Asia Pacific region. The proportion of countries with a minimum wage is slightly below the world average, and the levels of minimum wages tend to be low as well. There is considerable diversity within the region, but even some of the 'rich' countries that have had a form of minimum wage for some time have histories of neglecting to adjust the minimum including, as mentioned, in New Zealand. In common with much of the world, minimum wages in the region are not well enforced.

There are particular problems in the region, the large informal sector in Asia make enforcement difficult, and provide little incentive for governments to legislate or to set the minimum wage at a realistic level. Moreover some of the less developed nations in Asia use low wages as a source of comparative advantage in attracting MNEs. In Latin America, despite a long history of having a minimum wage in many countries, more general economic problems have caused minimum wage to be put on the back burner. Even more, minimum wages have been deliberately held down in an attempt to control inflation. Japan and Australia have the highest minimum wages in the region but in Australia, coverage has not been universal since almost half the Australian labour force has had no statutory minimum wage, however many of those without access to a statutory minimum are covered by awards.

The lack of effective minima impact upon particular groups. These include women, racial or religious minorities, and migrants. Justice demands that these people have access to a decent income. The nation-state is the only organization currently capable of regulating wages where collective bargaining is poorly developed. However, as we noted above, pressures of globalization make governments cautious about, or even hostile to increases in minimum wages. Unfortunately some national trade union movements are reluctant to push for better minimum wage systems because they believe they may undermine collective bargaining and trade union organization. Nonetheless, governments and trade unions have an interest in there being adequate minimum wage systems in the countries with whom they trade or compete in trade.

The challenge for many Asia Pacific nations is to set minimum wage at a decent level, to devise ways that it can cover the informal sector, and to enforce it successfully. In some countries this may be an awesome task for it demands a sophisticated legal system, and must overcome the objections of employers who fear their ability to compete would be undermined. A sound minimum wage system can be a spur to a more efficient economy, one that does not rely on cheap labour for its success. A better minimum wage is not a full solution to the problems of poverty, inequality or uneven economic development - a successful policy on minimum wages must be nested in broader policies of labour regulation and economic development - nonetheless a sound minimum wage system must be an essential component of any package of policies to achieve these objectives.

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[1] Convention Concerning the Creation of Minimum Wage-fixing Machinery

[2] Convention Concerning the Creation of Minimum Wage-fixing Machinery in Agriculture.

[3] Convention Concerning Minimum Wage-fixing with Special Reference to Developing Countries.

[4] These arguments are spelt out more fully in Brosnan (2002).

[5] This section is based on a portion of Brosnan (2003).

[6] A further elaboration on this argument is in Brosnan (2003).

Somali Women's Experiences in Paid Employment in New Zealand

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Abstract

There is growing international interest in the employment issues encountered by refugee and migrant workers. Within the New Zealand context, Somali women migrants experience one of the highest rates of unemployment, yet some are employed. In this paper we present research that explores what a small group of Somali women did to find and maintain paid employment. Interviews were conducted with six Somali women currently engaged in paid employment. These women reported that their clothing and appearance were significant barriers in their initial job search. Most attributed gaining paid employment to their having a New Zealand tertiary qualification and skills recognized by their current employers. Family support and personal time management skills were deemed important features to maintaining employment. At times, these women experienced conflict between their identity as Somali Muslim women with organizational cultures and requirements. We conclude that these barriers can be resolved with sensitivity and communication with employers.

Somali Women's Experiences in Paid Employment in New Zealand

In the past ten years, Somali migration to New Zealand has grown rapidly. Most of the Somali migrants to New Zealand have come as refugees selected by the United Nations High Commissioner for Refugees (UNHCR). In 1993, following an international appeal, New Zealand agreed to accept the first group of 92 Somali refugees through the annual quota refugee programme (Somali Friendship Society, 2002). By 2001, 1,971 Somali were living in New Zealand and 492 in the Waikato Region (Ho, Guerin, Cooper, & Guerin, 2005; Statistics New Zealand, 2002). The Somali community, and Somali women in particular, have encountered problems gaining access to paid employment since their arrival to New Zealand (Guerin, Guerin & Elmi, 2006). Indeed, refugee and migrant employment status has gained considerable international attention over the past 15 years (e.g., Altinkaya, & Omundsen, 1999; Buijs, 1993; Forrest & Johnston, 2000; Holden, 1999; Montgomery, 1991, 1996; Morokvasic, 1993; North, Trlin, & Singh, 1999; Pernice, Trlin, Henderson, & North, 2000; Shih, 2002; Schwarzer, Jerusalem, & Hahn, 1994; Waxman, 2001; Wooden, 1991).

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Refugees remain on government welfare-benefits for an average of three years before finding full-time paid employment in New Zealand (The McKenzie Trust, 2004). This situation is exacerbated for the Somali ethnic group generally, and Somali women specifically. As a group, Somali experience unemployment rates four to five times higher than the national average (Guerin, Diiriye, & Guerin, 2004). New Zealand labour force statistics for 2001 reveal that Somali women have the second highest female unemployment rate at 42.9%, a labour force participation rate of 26.9% (compared to 60.1% for the 'all women' category), and 14.8% in paid employment (Guerin, Ho, & Bedford, 2004). These high unemployment and low labour force participation rates for Somali women have been attributed to structural constraints, language barriers, non-transferable skills and qualifications (Guerin, Diiriye, & Guerin, 2004), and differences between religion, culture, and family composition (Guerin, Guerin, Diiriye & Abdi, 2005; Guerin, Guerin, & Elmi, 2006; Kelly, 1989).

Structural constraints affecting refugee employment status have been found to include the resettlement in residential areas removed from industrial or commercial sites, making access to employment more difficult; fewer employment programmes specifically designed for refugees compared to the general public; and a lack of English as-second-language programmes (The McKenzie Trust, 2004). In the 2001 census, 32.2% and 21.4% of Somali women and men respectively could not speak English; however, over half spoke two or more languages (compared with only 5-6% of New Zealanders); a skill that might be transferred to the New Zealand employment environment (Guerin, Guerin, Diiriye, & Abdi, 2004). Another issue is that the Somali language was only officially written in 1972 in Latin script, thus adapting to a paper-based society may be difficult for older Somali (Guerin, Guerin & Elmi, 2006). Traditional Somali business practices, involving social networks, negotiation, over-land trade routes, and few bureaucratic or legal rules, are not always recognized or easily transferable to the New Zealand environment (Guerin, Guerin, Diiriye and Abdi, 2005). Similarly, many Somali migrants (36.6% of the women and 25.8% of men) have no formal qualifications and very few have degree-level qualifications; a pattern that is changing as more Somali youth enroll and complete tertiary education in New Zealand (Guerin et al., 2005).

In addition to the above barriers to gaining employment, the majority of Somali migrants are practicing Muslims. The observances of Salat (prayer) and the Fast of Ramadan do not readily match the rhythm of the New Zealand working day or the Christian holy days, which are codified in the New Zealand Holidays Act. For example, Salat is to be observed at dawn, noon, mid-afternoon, sunset and nightfall and preferably in a mosque but prayer is permitted almost anywhere, such as in fields, offices, factories and universities (Farah, 1987). The Fast of Ramadan is observed in the ninth month of the Muslim calendar (falling somewhere between October and December). This holy month is deemed the time to strengthen family in which fasting during daylight hours is followed by eating small meals in the evening with family (Farah, 1987).

Somali women's highly visible religious-clothing, prescribed gender interactions and traditional family roles have also been found to influence their employment status. As with poor language skills, their long headscarf is sometimes perceived as a communication barrier and a health and safety hazard in the employment environment (McGowan, 1999). Women wearing headscarves have reported resistance and discrimination in the workplace, and some view wearing them as the main factor for their unemployment (Guerin et al., 2004). Western practices of hugging, kissing, touching, shaking hands, and flirting between men and women is strictly prohibited in Muslim teachings; practices that can restrict the type of work environment deemed acceptable to some Somali migrants.

The assigned gendered role for Somali women requires them to be responsible for childcare and the household (Abdullahi, 2001). However, educated Somali women are expected to find work and maintain these traditional household duties (Jenkinson, 1999). These values have been transferred to New Zealand (Ahmed, 1999). With an average of five children (that can range between 1 and 15 children), coupled with a relatively young population (half are under 16-years of age) Somali women in New Zealand have high family demands and responsibilities affecting their employment status (Guerin, et al, 2004). According to Somali cultural practices, once the eldest child reaches their youth, they too share these family responsibilities as part of their preparation for adulthood.
Even though Somali women record the second-highest unemployment and lowest labour force participation rates in New Zealand, some are employed. Our interest is in exploring the factors identified by Somali women that contribute to their ability to gain and maintain paid employment in New Zealand. We begin by reviewing the position of Somali women in the New Zealand labour market and the factors that have been attributed to their marginalized employment status. The 'talk-around' method (Pe-Pau, 1980) was used to frame the interviews conducted with six Somali women currently in paid employment. These women identified a number of individual, organisational, and family responses that enabled them to accommodate their multiple responsibilities and obligations to family, Islam, work and community.

This review of existing research guided our development of a thematic questionnaire (Gillingham, 2000) to explore Somali women's experiences in finding and maintaining employment in New Zealand. Our first theme was to explore whether barriers were encountered in the job-search process. Our second theme was to understand how Somali women accommodated their religious, family and community commitments with their paid employment obligations. Finally, we aimed to determine strategies the women used to help maintain their paid employment. The actual method used is described in the following section.

Method

Interviews were conducted with six Somali women in paid employment in 2005. The aim was not to obtain a representative sample, but rather to obtain stories from women in diverse circumstances to help understand the range of factors influencing acquisition and maintenance of employment. Therefore, the women interviewed included three married and three unmarried women, with and without children, and in full- and part-time employment. The interviews were conducted by a Somali woman (the first author) tape recorded and notes were taken. The "talk around" method was used in which questions are asked in a natural conversational context so participants did not feel they were being interrogated. This method was recommended by Pe-Pua (1989) for indigenous Filipino research, based on Pagtatanung-tanong or "asking around" and has since been used in research with Somali. The questionnaire sheet was translated into Somali but, because many do not read or write the language, the interviews were all conducted orally, in Somali, and translated into English for transcripts.

Four interviews took place at the participant's house, and two interviews were conducted at the university library. The participants chose the locations based on convenience and comfort. Interviews were conducted over a two week period in August 2005 and each interview was approximately one to two hours long. Transcripts of all interviews were typed and were checked by participants for recording accuracy. The transcripts were analyzed for key themes. Names used in this report have been changed to maintain confidentiality of participants and some personal details that could reveal participants' identity have been slightly modified.

Limitations

Due to time limitations and the limited scope of the project, only six women in paid employment were interviewed from one city in New Zealand. Therefore, while these findings are not generalizsable they do provide valuable insight that may form the basis of future research.

Participants

Maggie arrived in New Zealand in 1996 at age 17, and was 26-years old at the time of the interview. She is studying towards a tertiary-level qualification and has two part-time jobs. In one job she works eight-hours per week as a coordinator in an agricultural industry. For the second job, she works 12-hours per week as a Somali support-worker in a local NGO (non-government organization) providing assistance to new migrants and refugees. She is unmarried, has no children and lives with her family. As the eldest child, her family responsibilities include helping her mother, who does not speak English or understand the New Zealand culture, and caring for younger siblings. Prior to coming to New Zealand, Maggie was not employed, partly because she was young when she left Somalia and had been in high school, but she did volunteer with the UNHCR while in a refugee camp.

Anny arrived in New Zealand in 1993 at age 11, and was 23-years old at the time of the interview. She recently graduated with a Bachelors degree from a New Zealand university and currently works 100-hours per fortnight as a laboratory technician. She has gained various working experiences while growing up in New Zealand, and is conversant with the language and culture. Anny is unmarried and has no children; her family responsibilities include helping her grandparents, parents, younger siblings and extended family.

Mary arrived in New Zealand in 1998, and was 40-years old at the time of the interview, and raises nine children on her own. She owned various businesses in Somalia and draws on her business experiences and skills in her current part-time position in a family clothing store, owned by the Somali community, where she works 14-hours per week. She attends English language courses in the evenings.

Sally arrived in New Zealand in 1999 at age 16, along with her mother and siblings, and was 23-years old at the time of the interview. She graduated with a Bachelors degree from a New Zealand university and works full-time as a medical laboratory assistant. She is unmarried, has no children and lives with her family. She sometimes helps her mother with housework, but her first priority is her paid employment.

Kate arrived in New Zealand in the late 1990s and was 30-years old at the time of the interview. Kate has graduated with a Bachelors degree from a New Zealand tertiary institute and works full-time in the health sector. In the past, she has worked for refugee agencies in Africa and New Zealand and is currently involved with the Somali community and other ethnic organizations. She is married with three children. Her husband and extended family help with child care and household duties to enable her to accommodate her multiple family, community and employment roles.

Hannah arrived in New Zealand in 1998 and was 28 years-old at the time of the interview. She has graduated with both Bachelor and Diploma degrees from a New Zealand tertiary institute, and is a qualified interpreter. She has two part-time jobs in the education sector; combined, these jobs involve 10-hours per week. She is involved in providing both unpaid and paid interpreting services

for the Somali community. She is married with no children and is responsible for the household duties.

Results

These women described various experiences when trying to find paid employment, accommodating cultural and religious practices with paid employment, 'being' a Somali woman in the work environment, and strategies to help them maintain their paid employment. These themes are presented below.

Finding Paid Employment

The majority of the women had applied for at least three jobs before gaining their current position. They reported using typical job-search methods such as newspaper, internet, recruitment agencies, the government work-placement agency, word-of mouth, and networking. Maggie found her job through relatives and friends:

> *Not newspaper or through other things because my friends told me that there is a position available and that the company needed people and that's how I got my job.*

Sally was the only one to report "no problems finding work" as she explained that she gained her position as a result of proving herself during work-placement training as a lab technician during her University studies.

The five other women described various barriers to finding paid employment. All five identified their clothing and appearance as barriers, Kate, for example, believed that employers were more interested in her appearance than her capabilities; a view shared by Hannah:

> *Even though I matched the skills and qualification required, they said that my application was not successful. Maybe they did not like me because of the way I dressed.*

Four believed their religious practices affected their ability to find work. One perceived her colour and language-skills as significant barriers in her job-search.

'Being' a Somali Woman at Work

These women described a number of negotiations and accommodations made in terms of their cultural and religious identities within the workplace. All of these women identified cultural dress and prayer time as significant cultural and religious issues that they contended with in their workplaces. Most of the women said that they had to change the way they dressed to fit their employment situations. Some were told to wear smaller scarves to fulfill safety regulations, however, many felt these requests were less about safety and more about their employer's arrogance and lack of cultural awareness and understanding. This view was captured by Kate:

> *Mainly it's dress code, on how I dress as a Muslim woman, how I think I appear, and my skin color is not of the mainstream New Zealander, so I stood out from the rest.*

Kate described feeling that she frequently had to choose between religious and employment practices, however, she challenged the dress code and had this to say:

> *Doing the job that I am required to do at the same time baring in mind and not giving away my religious and cultural practices, such as praying, wearing my head scarf and long dress was a difficult move to do. Trying to make the employers understand my religion and finally convincing them of the importance in keeping my traditional dress was very challenging and difficult but I finally overcame it and had to modify their uniform to meet my religious practices.*

Ensuring the observance of prayer while at work was a key issue for all of the women. Hannah found it challenging to find a suitable time to pray and "squeezed prayer time in with her work patterns". Indeed, three women reported praying during their break times and not the prescribed or obligatory prayer times. Half of the respondents stated that they were provided with a place to pray at work while the other half prayed at work but there was no prayer room provided.

Hannah also identified her discomfort about 'workplace-shouts' as she did not know if the food was Halal (prepared according to Islamic teachings):

> *When we are having shared lunch, I don't want to eat some type of food especially when it's not halal and my colleagues always invite me to the food, but I don't want to make them feel as if I am not favoring their food. The main reason I don't feel comfortable eating there is that I don't know what type of ingredients are in the food and whether it is halal.*

Maggie identified the New Zealand customary practice of shaking hands, particularly with men, as a difficult cultural practice for her to overcome. In contrast, Sally described accommodation within her workplace as her manager and colleagues were very understanding and aware of her cultural practices:

> *The manager is very nice and understanding, they really promote that there is different cultural needs, and if you have problem, they will help you out and then I feel really comfortable and look forward to going there every morning because everyone is friendly.*

These women all commented that observing the Fast of Ramadan was very seldom an issue that they had to accommodate at work. This was partly because they were all used to fasting and working; and partly because many finished work in time to 'break fast' with family. The two women who, from time to time, worked night-shifts and broke fast at work, felt Ramadan was less of an issue as observing Salat was a greater priority.

Balancing Family and Community Commitments

The three women without children reported that although their families had prioritized their paid-employment, they still attended to traditional family commitments. Three of these women had child care responsibilities, while the other three had extended family commitments and were in full- or part-time study. Yet, most of the women stated that these responsibilities did not interfere with their employment.

Sally provided the example that she manages her employment and extended family responsibilities by separating and prioritizing her multiple commitments. She manages this even though she is

responsible for helping her mother with housework, especially during Ramadan. Maggie has the responsibility of looking after her mother, brothers and sisters and studying full-time while working:

> *I am the eldest in my family so I have the responsibility of looking after the house. It's part of our culture for the eldest in the family to take on the responsibility. I have to take them to school, take them to hospital when they are sick. My mum can't drive and she does not understand the language so I have to take on these responsibilities. I have to help my mother.*

The three women with children described the extensive help from their immediate and extended families their work obligations. Kate, who has three children, developed strategies of compromise and accommodation between paid and unpaid work responsibilities, and received help from her brothers and sisters who cared for her children while she was at work. For Mary, it was the support from her elder sons that was important:

> *The fact that my children understand why I am working and the fact that they are Okay with it helps me maintain my work. I am determined to work whether I have other responsibilities or not.*

Strategies for Maintaining Employment

First and foremost, all of the women identified the importance of family support as key to maintaining employment (as discussed above). The second most common strategy they identified was to equip themselves with the right skills, training and qualifications needed for their jobs. This view was shared by Mary, Kate, Sally, Maggie, and Hannah. For Mary, her experience from owning her own business in Somalia and dealing with her own culture were invaluable to her current employment. Hannah noted the importance of continually upgrading skills as key to her maintaining employment. Sally's comment is reflective of all their views:

> *What makes it possible for me to work are the skills and qualifications that I have and whatever the job requires I am experienced and have the skills and qualification required. Also, the fact that I have trained there and they know me, so it's plus point.*

Similarly, these women recognised the importance of time management skills and their own ability to organise, plan, and prioritise their competing commitments in order to maintain their paid employment. In addition to these shared views, particular individual strategies were described. Hannah noted her motivation, and willingness to continue learning and improve skills was important to maintaining her job. For Anny, key features to maintaining her employment included being productive, punctual, enthusiastic, and the fact that she does not have children to look after. Kate recognized the importance of managing workplace pressure and controlling work stress, and gaining adequate sleep:

> *Having good sleep and making sure that I am fresh when I go to work so I can work to the best of my abilities. Making sure that I am not stressed; every time I pray and ask God to help me so that I don't do anything wrong that costs me my job.*
>
> For Maggie, working as a team, being collaborative, enjoying her job, and having supportive colleagues and managers were important. Finally, Hannah noted the importance of being committed, hardworking, reliable, patient, as well as being able to communicate and interpret between clients and with her co-workers.

Discussion

Somali women migrants have been marginalized within the New Zealand labour market. Despite their high family, religious and community commitments a small number have gained and maintained paid employment in New Zealand. Our interest has been to understand the factors that Somali women attribute to their ability to participate in the labour market.

Similar to previous findings, these women reported initial difficulty in gaining their current positions, which they attributed to their visibility in terms of their religious dress and employer perceptions of their cultural and religious practices (e.g., McKenzie Trust, 2004). However, only one woman in our sample perceived her language capabilities, lack of recognizable qualifications, and colour as barriers to finding paid employment. This finding reflects that most of these women have been in New Zealand for a number of years and are proficient English speakers, four have graduated from New Zealand universities, and one is currently enrolled in tertiary education. Indeed, having the right skills and qualifications for the job market was deemed essential to gaining and maintaining paid employment by all these women, and took responsibility for upgrading their skills to this end. Similarly, these women identified what might be considered typical Western 'work-ethic' attitudes, for example, being punctual, productive, motivated, and so on, as important strategies to ensure continued employment.

In previous research, Somali women's responsibility to their family has been deemed a barrier to employment. In contrast, these women identified the importance of support received from immediate and extended family as key to their ability to maintain employment. Thus, for these women, responsibility to family is a reciprocal and an accommodating relationship. This relational family support was strengthened by these women's personal time management skills and their ability to plan, organise and prioritise their multiple commitments.

Accommodation within the work-setting was also deemed important to maintaining employment. For some, this meant that they had to accommodate important cultural and religious concerns, specifically Salat and modifying their scarves. Accommodations made by the employers were either an outcome of existing or newly learned cross-cultural awareness, or as an outcome of the women negotiating with their employers. Increased cross-cultural awareness with regard to issues of cross-gender mixing may further enhance the comfort, accessibility, and indeed, productivity of Somali women employees.

Conclusion

The women in this study attributed their ability to gain and maintain employment to a combination of personal, family and organizational accommodations. These women's diverse stories may inform policy initiatives to address high unemployment rates of Somali women specifically, and Somali men and refugee migrants generally, and help relieve labour and skill shortages. These women supported the need to gain English proficiency, formal qualifications and recognizable skill. These individual responsibilities may be supported by English-proficiency programmes enabling migrants to better integrate into their new communities. Small accommodations in the work setting can be achieved at little or no cost to the employer. Overall, this study contributes information and insight about a not-well understood group in New Zealand. Understanding Somali women, perhaps the most marginalized group in New Zealand, will improve our employment interventions for migrant and refugee groups more generally. Specifically, appreciation of the diversity within groups, and therefore the necessary diversity required in interventions, will benefit employment outcomes.

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Research Note

Exploring Work Intensification in Teaching: A Research Agenda

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Abstract

This paper looks at work intensification in the Australian public education sector, an industry sector where the intensification of work has not been fully investigated. Beginning with a review of the literature on work intensification in general, the paper proceeds to examine the literature on the intensification of work in the education sectors in the UK, the US and Australia, in order to identify areas that require further research. While there is some evidence suggesting that teacher's working hours have increased and that their roles have expanded, there is nonetheless, a paucity of research on work intensification in this sector. In particular, the causes and effects of work intensification for teachers and school principals are not well understood and there is little evidence on the roles of key industry stakeholders, such as unions, in developing supportive systemic responses to the issue of work intensification. This paper discusses three key areas for further study in Australia: research focussing separately on causes and effects of work intensification on individual teachers and principals, and research to examine strategic responses to work intensification from teacher unions.

Introduction

Work intensification is an area of increasing interest in the management and industrial relations literatures, as it has far reaching effects for individuals and implications for communities and organisations. This paper analyses the concept of work intensification in the context of the Australian public education sector. This sector is both interesting and complex. On the one hand, education is touted as underpinning current, national, economic and social goals. It has undergone profound change philosophically and structurally in recent decades in order to be properly aligned with these goals. Teaching, as an occupation, has changed substantially, and it is reported that teachers are victims of work intensification. Simultaneously, the education sector is one which displays numerous structural and image problems: there are shortfalls in new recruits, high levels of stress among current workers, and there are a multitude of micro-issues relating to this occupation, such as lack of career options and professional standards. Thus, the question arises as to the relationship between work intensification and the problems plaguing the sector. At the same time, recent research calls

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for further investigation into specific instances of work intensification, in order to clearly target the contributing factors in the attempts at developing solutions. This paper responds to the call for further research. Our aims are firstly, to examine the manifestations, causes and effects of work intensification in this sector, and secondly to discuss areas requiring further research. The paper begins with a general definition of the concept of work intensification drawn from international literature based on various industries. Following from this, the paper proceeds to the analysis of specific UK, US and Australian literature on work intensification in their respective education sectors in order to identify gaps in the literature and to outline areas of potential for further study.

Work Intensification

Broadly speaking work intensification refers to increases, either in time or in workload within a given job. Having said this, the literature indicates there is some conceptual ambiguity. Green's (2001) definition of work intensification distinguishes between 'extensive work effort' (time spent at work) and 'intensive work effort' (the rate of physical/mental input to work tasks). However, Green also (2002) represents it as a 'process of change at workplaces' stemming from technological and organisational change, including new HR policies (Green, 2002). O'Donnell, Peetz and Allan (1998) propose two main dimensions of work intensification. The first dimension refers to employees "doing more", or having extra roles or increased tasks. The second dimension refers to "coping with less staff" in workplaces, either due to downsizing, staff attrition or not hiring new staff. In another paper, Peetz et al 2002, look at work intensification in terms of work 'pressure' and work 'changes'.

Beynon, Grimshaw, Rubery and Ward (2002) suggest that while 'external market conditions' account to some extent for work intensification, organisations play a key role in changes to work. These authors argue that although the organisation is 'constrained by external regulatory forces […] the power of the organisation in structuring employment has to be recognised within any account of employment change' (p. 20). This is because organisations 'determine the terms under which people are employed [and] design what kind of work' is done (p. 20). More specifically, Beynon, et al (2002) propose that work intensification results from three main types of managerial control strategies: firstly by insisting on the 'sovereignty' or 'dominance of the customer'; secondly, by the 'redesign of job tasks', and thirdly, by implementing 'new control technologies", to increase the 'pace of work and the quality of performance', including the plethora of HR techniques and complex output measurements' (p. 268). Some recent research in the health sector uses Beynon et al's (2002) three dimensions of managerial control to explain the intensification of the work of nurses (White & Bray, 2003). White and Bray, (2003) thus suggest that customer-focus (or how customers become defacto supervisors, exacting greater effort); the redesign of jobs (especially the widening of responsibilities) and the use of new, auditing and performance measures have increased the pace and effort of nurses' work.

The studies cited above indicate that any ambiguity surrounding the work intensification construct may be explained by differences in terminology and the perspective taken by the researchers. While some studies clearly focus on the *meaning* of work intensification (Green, 2001; O'Donnell, Peetz, & Allan, 1998), others look at the *antecedents or drivers* of work intensification (Beynon, Grimshaw, Rubery, & Ward, 2002; Green, 2002; Peetz, Townsend, Russell, & Allan, 2002). It is reasonable that scholars adopt distinct terms, and focus on different aspects of the same concept, particularly where the subject of research is still being

mapped out. Implicit in all the research, however, are the issues of time and effort spent at work, or 'longer working hours and greater work effort' (White & Bray, 2003).

The twin dimensions of time and effort relate to the *meaning and manifestation* of work intensification and are the subject of a number of empirical investigations. As a social and industrial issue, work intensification appears to have reached epidemic proportions worldwide for many professionals, craft workers and other occupations (Burchell, Ladipo, & Wilkinson, 2002). It characterised European labour markets during much of the 1990s (Green, 2002), and is increasingly prominent in Australia. Evidence of work intensification is being documented in multiple sectors and contexts, including health (Allan, 1998; Bray & White, 2002; Willis, 2002); aged care (Allan & Lovell, 2003); finance (Probert, Ewer, & Whiting, 2000), and education (Bartlett, 2004, forthcoming; Burchielli & Bartram, 2003; Kyriacou, 2001; Pocock, Wanrooy, Strazzari, & Bridge, 2001; Probert et al., 2000; Troman, 2000).

O'Donnell, Peetz and Allan (1998) propose two main dimensions of work intensification. The first dimension refers to employees "doing more", or having extra roles, increased tasks and bigger workloads. The second dimension refers to "coping with less staff" in workplaces, either due to downsizing (lay-offs), staff attrition (whereby staff that leave are not replaced) or not hiring new staff. Clearly, the two dimensions are inter-related since 'doing more' implies the allocation of a greater number of tasks to a fixed (no growth) or reduced number of employees. Similarly, a frequent outcome reported for the "survivors" of downsizing, or for the remaining employees in workplaces shrinking in size due to attrition, is an increased workload (O'Donnell et al., 1998). Existing literature suggests there is support for these two dimensions. Examples from the health sector indicate a link between downsizing, cost reduction and increased workloads for employees, whereby nurses are treating significantly more patients, at a lower cost. In other words, nurses report doing more, with less staff (Bray & White, 2002).

The literature identifies numerous antecedents for work intensification, in particular, changes to work (Beynon et al., 2002), and especially the shifts in philosophy underpinning the development and use of management technologies, such as Human Resource Management (HRM) practices and 'high performance systems' (Godard & Delaney, 2000) which exert pressure for greater flexibility, productivity and efficiency (Allan, 1998; Willis, 2002). This has resulted in different manifestations of work intensification, such as changed work design and skills requirements (Appelbaum, Bailey, Berg, & Kalleberg, 2000); technological and organisational change (Green, 2002); the reduction in trade union powers, job insecurity, and more highly trained managers (Burchell et al., 2002). The myriad changes observed to the nature of work are explained by two contending theories. *Professionalization* suggests that work changes are resulting in occupations becoming more complex, more skilled and more satisfying, eg (Appelbaum et al., 2000). On the other hand *intensification* 'is broadly derived from Marxist theories of the labour process'(Hargreaves, 1992), and describes a trend towards the degradation of work and working conditions.

Work intensification is frequently discussed in terms of longer working hours, and in recent years, much has been written about the long and extended hours worked by the labour forces in both the UK (Green, 2001; Green, 2002) and the USA (Godard & Delaney, 2000). In Australia too, there is mounting evidence of a general trend towards longer working hours for full time employees (Watson, Buchanan, Campbell, & Briggs, 2003) and there appears to be a general movement away from the long-term trend of reducing working hours (Peetz, Townsend, Russell, & Houghton, 2003). There is some complexity surrounding working time,

since the longer working hours only affect certain types of employees. Green's (2001) research suggests that while there has been an increase in working hours for some workers, there has been a concurrent increase in households with no work at all. Similarly Beynon et al (2002) suggest that the extended hours of some employees are occurring simultaneously with the increase of a range of non-standard working arrangements, and should be seen in the broader context of the 'fragmentation of contractual statuses' (p. 18) and deliberate, managerial changes to the employment relationship (pp 203-207). Given the prevalence of employee flexibility, job expansion or job broadening (Allan, O'Donnell, & Peetz, 1999), there is mounting evidence to suggest that full-time employees are being given more tasks to undertake with inadequate time resources and that extended working hours are resulting in work overload.

The reported negative effects of work intensification include the decline of workers' health and well-being (Allan, 1998; Willis, 2002), job stress (Watson et al., 2003) and burnout (Guglielmi & Tatrow, 1998; Pocock et al., 2001), as well as low staff morale. In turn, this has corresponding costs to organisations due to increases in staff counselling, incident reports, workers' compensation claims and quit rates (Allan, 1998). The literature also suggests there are negative flow-on effects for the community, including high medical costs, social fragmentation, and work-family imbalance (Burchell et al., 2002; Pocock et al., 2001; Watson et al., 2003).

The literature on work and family issues suggests that achieving a balance is still very difficult (Boyar, Maertz Jr, Pearson, & Keough, 2003; Carlson, Derr, & Wadsworth, 2003; Kinnunen & Mauno, 1998). Work and family balance has been defined as being the extent to which a person can at the same time '*balance the temporal, emotional and behavioural demands of both paid work and family responsibilities*' (Hill, Hawkins, Ferris, & Weitzman, 2001). Certain studies have indicated that good work-life balance practices are meant to benefit both employers and employees (Churchill, Williamson, & Grady, 1997; Drago et al., 2001; Siegwarth, Mukerjee, & Sestero, 2001) and to have a direct impact on the financial benefits of the company, including increased productivity and performance (Grover & Crooker, 1995). However, it is also suggested that work and family benefits will only be helpful to employees if organisational culture is supportive for employees to use these benefits (Thompson, Beauvais, & Lyness, 1999) .

Work intensification is associated with negative effects on individuals, relationships, family life, parenting, leisure, and the extended family (Pocock et al, 2001). Some researchers like (Pleck, Staines, & Lang, 1980) and (Voydanoff, 1988) consider work overload to be among the most important factor leading to work- family conflict. According to the Scarcity Theory (Goode, 1960), since individuals have a limited amount of energy to perform the various roles (work and family), it is expected that work intensification will lead to role stress. Moreover, work intensification will lead to work spill-over on family roles, which not only creates emotional, physical, and mental problems, but also negatively affects the family roles. Both time-based and strain-based conflicts would make it difficult for employees to fulfil family responsibilities (Greenhaus & Beutell, 1985). Generally speaking, since women are more involved in their work and family roles, they are more prone to suffer from health problems (Smith-Major, Klein, & Ehrhart, 2002). Many women find themselves in a position where they are solely responsible for coordinating childcare and housework responsibilities, making it harder for them to adjust their work schedules, in comparison to their partners.
Given the different roles and responsibilities that workers have to perform, being involved in multiple roles is a very common thing. Multiple roles mean a variety of roles outside of an

occupation to which an individual is strongly committed (Ruderman, Ohlott, Panzer, & King, 2002). Holding multiple roles can be rewarding as it may increase self-esteem and levels of satisfaction (Danes, 1998). On the other hand, it can deplete individuals of their energy by increasing their burden. This is expected to result in stress, conflict, health problems, moods swing and lower levels of satisfaction (Voydanoff, 1988; Williams & Suls, 1991). Therefore, this trend tends to bring more conflict for women in balancing work and family roles (Wiley, 1987). Despite workplace arrangements, such as the provision of family leave, presumably designed to support work-family balance, balancing work and family responsibilities is still difficult. Australian research into the finance and education sectors suggests that, despite 'relatively good entitlements' in these sectors, 'employees face continuing difficulties in gaining access to these provisions' (Probert et al., 2000). This research clearly questions the authenticity of 'provisions' which cannot be accessed.

There is some evidence suggesting that innovations to work and HRM practices can result in positive outcomes. The literature puts forward that in the instances where innovative practices lead to greater worker participation, greater responsibility and autonomy, and better remuneration, such as in high commitment and high performance work systems, there are positive outcomes for both workers and the business (Appelbaum et al., 2000). The cases reported indicate that workers in these systems are better paid, have greater trust in their managers, feel greater motivation and satisfaction at work, and report no impact on stress levels. For the firm, the benefits are better performance. However, it seems that these results are highly contextual, and contingent upon numerous, co-existent factors. Firstly, it is noted that the evidence relates to specific manufacturing industries, and thus it may not apply to other industries, and occupations. It is equally important to note that the best reported outcomes relate to workplaces where a total constellation of new practices has been adopted, and where the core of these relates to very high worker control, including high involvement of the union (Appelbaum et al., 2000). Critics of these systems, however, are sceptical about any positive results. Some argue that 'only a minority of firms have comprehensively adopted these practices' and that a principal cause is the 'failure of managers to alter their values and beliefs' (Godard & Delaney, 2000). Others propose that autonomy is a myth (Harley, 2000) and that the likely effect of functional flexibility is work intensification (Allan et al., 1999; Godard & Delaney, 2000). In fact, it is suggested that work intensification can actually reverse the benefits of any autonomy, increased motivation or satisfaction, and lead to lower levels of productivity, efficiency, and effectiveness for organisations, as demonstrated in studies on the survivors of downsizing (Davis, Savage, & Stewart, 2003).

From a cost/benefit perspective, it would seem that work intensification has a greater amount of negative consequences. However, recent literature calls for further research on the issue at the micro level (Bray & White, 2002). More specifically, it is suggested that research should focus on the 'causes and consequences of it, including its relationship to workplace culture and the regulatory framework' (Peetz et al., 2002)

Work Intensification in Education

Increased working hours, increases in face-to-face teaching, increased responsibilities or 'expanded job roles' have been noted to characterise the intensification of work experienced by teachers in the USA (Bartlett, 2004), the UK (Hargreaves, 1992; Kyriacou, 2001; Troman, 2000) and in Australia (Burchielli & Bartram, 2003; Pocock et al., 2001; Probert et al., 2000). US and UK data indicate that teacher workloads have increased and that the role of the teacher has changed markedly in the past two decades (Bartlett, 2004), so that "classroom

teaching now constitutes only part of the teachers' work" (Troman, 2000). The concept of the "expanded role" for teachers is based on teachers' numerous responsibilities outside the classroom, including the following:

> *'leadership responsibilities and involvement in reform-oriented activity beyond the classroom. Teachers steward many aspects of the school including responsibilities like the school's assessment systems, pedagogical practices, and curriculum development. They work collaboratively and seek to coordinate student experience across the school.'(Bartlett, 2004)*

Bartlett (2004) dismisses the popular, but superficial notions of the teaching occupation as "easy and congenial work", or work that is "attractive to women". Instead, she suggests that these are urban myths, too narrowly based on certain, widely known award conditions (such as teachers' holidays), which ignore the harsher realities depicted in 'virtually all in-depth portraits of teachers' work [which] show it to be difficult, complex and emotionally draining work entailing long out-of-classroom hours' (Bartlett, 2004).

Work intensification for teachers in the US and UK is attributed to the pressures of 'managerialism', including the bureaucratic/government impetus to increase reporting mechanisms (Bartlett, 2004; Hargreaves, 1992; Troman, 2000; Woods, 1995). It is reported to have a range of negative effects including loss of collegiality and staff fragmentation; personal stress, burn-out, negative self-image and decreased levels of satisfaction (Kyriacou, 2001) and flow-on effects for teachers' families and communities. Bartlett (2004) questions why women, as the over-represented gender in this occupation, continue to tolerate the excessive demands of their profession and the punishing effects of their workloads. With the small number of exceptions that analyse the meaning of, and the causes and effects of work intensification in the education sector, the international literature indicates that further, context specific research is required.

Intensification in the Australian education sector and areas for further research

There is very little literature that examines work intensification in the Australian educational context. For example, a review of the *Australian Education Journal* since the year 2000 renders no titles on this topic. In the most part, it is noted that the issue of work intensification in Australia is discussed within a number of related contexts; among these, *teacher stress* (Burchielli & Bartram, 2003) and work-family balance (Probert et al., 2000; Thomas, Clarke, & Lavery, 2003). A notable exception to this is the work of Pocock, et al (2001). In spite of the paucity of evidence, it is possible to draw some general conclusions from the research already cited. This suggests that Australian teachers' workloads have increased due to task expansion, the introduction of new responsibilities and new, time-consuming activities. A central concern for teachers relates to long working hours which are not reflected in contractual (award) arrangements. One study reports that full-time teachers are working over 48 hours a week, with secondary school teachers averaging an hour a week more than primary school teachers (Probert et al, 2000). According to the State of our Schools Survey (ACTU, 2003) the average teacher hours per week is 56.4 hrs per week.

Teachers report that they spend far longer hours at work, as well as bringing work home, and they attribute their longer working hours to increased workloads and responsibilities (Burchielli & Bartram, 2003; Pocock et al., 2001; Probert et al., 2000). The literature

suggests that the increased workloads are evidenced by numerous factors. Firstly, increased teaching related activities, such as preparation, marking, large class numbers, increased face-to-face teaching and behaviour management (Burchielli & Bartram, 2003; Pocock et al., 2001; Probert et al., 2000). Secondly, changes to curriculum (Probert et al., 2000) requiring changes in daily practices and increasing the need for training. Thirdly, increases in demands relating to reporting and accountability, such as preparing student and whole-school reports of outcomes (Burchielli & Bartram, 2003; Pocock et al., 2001; Probert et al., 2000). Fourthly, management and communication tasks such as parent/teacher nights, on-going training, various meetings with staff, parents and students (Burchielli & Bartram, 2003; Pocock et al., 2001). Fifthly, broader education related tasks that fall outside the classroom, and teachers' usual job description, such as activities linking schools with the wider community, fostering a school community outside the classroom environment, providing extra activities for students, improving quality of teaching programs, and extending assistance to students with special needs (Burchielli & Bartram, 2003; Pocock et al., 2001). Sixth, increases in needs for on-going professional development training (Burchielli & Bartram, 2003; Pocock et al., 2001).

There is mounting evidence suggesting that the role of school teachers has changed from essentially a teaching/educational role to encompass a much wider range of responsibilities, including counselling, welfare, social work, procurement of funding, reporting, government lobbying and community liaison. In other words, it appears that workloads have increased. However, since most of this evidence comes from the literature related to stress, which represents work intensification as a cause of stress, it does little to elucidate the causes of work intensification. While work intensification may share some of the antecedents of stress, we suggest that currently, there is only a partial picture of the causes of work intensification for teachers, which requires analysis. Numerous questions arise with regards to expanded teacher workloads; in particular, it seems important to identify the major sources of pressure for workload expansion and reasons for teachers' acceptance of these, and to explore ways of providing support to teachers. Anecdotal evidence implicates the profound ideological and bureaucratic changes which have affected education in the past two decades (Townsend, 1998). In any case, understanding the major *causes* of work intensification for teachers has important ramifications for policy development at all levels.

A similarly partial picture emerges in relation to the *effects* of work intensification for Australian teachers. Available evidence suggests that the effects of work intensification are far reaching and multi-layered. On a personal level, teachers are absorbing their increased responsibilities, and increasing their own work expectations (Probert et al., 2000). This suggests that teacher behaviours are contributing to work intensification. In addition, it is suggested that the expectation of completing an excessive range of tasks may result in reduced quality of teaching as teachers report not having the time to prepare and develop engaging material (Probert et al, 2000). Internalised pressure from overwork is also manifesting in self-questioning and crises of professional confidence (Burchielli & Bartram, 2003), as well as stress, physical illness and pressure on families (Pocock et al., 2001). According to a study carried out among Australian teachers, the old ways of working are not suitable to meet the current demands due to work intensity, long working hours, adopting new work methods and pressures to complete the tasks on time (Churchill et al., 1997). Therefore balancing work and family roles becomes very difficult for teachers. There is the additional danger that teachers may experience a degree of work overload that exhausts their enthusiasm and erodes their commitment. Management literature clearly links work satisfaction, employee motivation and commitment with both turnover and recruitment of employees. Currently, there is evidence to suggest an undersupply of teachers into schools (ACTU, 2003).

However, the relationship of work intensification to teacher satisfaction, motivation and commitment, and to turnover and recruitment can only be guessed at. This leads us to conclude that an important area requiring the attention of researchers relates to the causes and effects of work intensification for teachers.

A second area for further research relates to school principals. The burden of increased responsibilities and workloads does not only affect teachers, as school principals are reporting similar issues (ACTU, 2003). School principals share parallels with "middle managers" in industry, since they supervise a group of workers, but have limited authority, and are answerable to a higher form of governance. In addition, a common problem among "middle managers", who have an interface with both workers and (governing) executives, but are alienated from both, is that they often bear the brunt of much organisational change (McConville & Holden, 1999). It may be argued that principals are the proverbial 'meat in the sandwich' in education, bearing the burden of increased pressure from overworked teachers, on the one hand, and a demanding bureaucracy, on the other. Since school principals are a key form of social support for teachers (Sarros & Sarros, 1992), this raises questions around the issue of support and alienation for all staff in the school context. Given their own increased workloads, are principals really in a position to support their staff? Who supports the principal? Moreover, local and overseas evidence suggests 'a widespread problem with principal recruitment' and points to 'reform policies' as the major culprit (Gronn & Rawlings-Sanaei, 2003). Limited research evidence clearly suggests that Australian teachers and principals are certainly "doing more" and with fewer resources. At the same time, it is clear that further research must focus on work intensification and its effects on principals, so that specific strategies can be developed to address the limitations in their crucial role in the education system.

A third area which requires greater understanding relates to the development of systemic responses to the issue of work intensification. While the discussion above suggests a need for developing a (supportive) response at a bureaucratic level, there is some evidence to suggest that teacher unions, and union strategy, may contribute both to overwork and its solutions. For example, Probert, et al (2000) hold teacher unions partly responsible for work intensification because of their role in bringing about award restructuring and enterprise bargaining. These authors challenge the unions to 'rethink' their strategies. Additionally, if there is indeed any truth to the claim that Enterprise Agreement provisions are not being accessed (Probert et al., 2000), then one would expect that teacher unions would have an interest in identifying and eliminating the barriers to access. Thus, agreements in this sector lend themselves to being critically analysed. Recent industrial action undertaken by the Australian Education Union (AEU) has focused on workloads, reflecting the currency of these issues in the school sector, and also suggesting that this is a strategic policy area for teacher unions. Anecdotal evidence suggests that the occupation requires attention to issues such as greater career pathing, training and remuneration, and that these factors may alleviate the intensification of work in this sector. Clearly, further research is required to analyse union responses and strategies with regards to work intensification in education. Although the industrial climate is generally hostile, especially after the re-election of the conservative Howard government in 2004, with its aggressive industrial relations reform agenda, the current under-supply of teachers may provide a favourable environment for teacher unions to make some gains.

Conclusion

This paper concludes that work intensification in the Australian public education sector results in many negative consequences for which there are as yet, no clearly articulated, systemic solutions. The review of the literature however, strongly suggests the need for further research. Three specific areas are highlighted. Firstly, we call for further research focussing on the individual teacher, in particular to examine the causes and consequences of work intensification but also to examine the relationship between work intensification and teacher compliance. Secondly, within a management context, further research is indicated analysing the causes and effects of work intensification on school principals, as middle managers. Finally, within an industrial relations context, there is scope for analysing teaching agreements, and union strategies to address work intensification. We suggest that research in these three areas can result in positive practical implications for teachers.

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CHRONICLE

February 2006

During February, a number of media reports highlighted the issue of low paying jobs and sectors. This included a Bill to abolish youth pay rates - 'the Minimum Wage (Abolition of Age Discrimination) Amendment Bill' - promoted by the Green Party MP Sue Bradford and the "Super Size My Pay" campaign calling for the minimum wage to be increased to $12 an hour. Bradford's Bill proposes to end youth rates for 16 and 17-year-olds and ensure that the adult minimum wage would apply to all workers. She told a rally in front of Parliament that youth pay rates were "totally unjustified".

The Unite union staged a rally in Auckland as part of a campaign to raise the minimum wage for thousands of workers in the fast-food industry. Unite was negotiating with fast-food employers McDonald's and Restaurant Brands New Zealand. An *NBR* article commented that Unite was a 'new union' that has been ramping up militant action at precisely the time when older unions are starting to resemble part of the establishment. The *Dominion Post* and the *Press* reported that after fast-food outlets, Unite will focus its sights on hotels, petrol stations, call centres, commercial cleaning and car park companies. The union run by former Alliance Party leader Matt McCarten is one of the first to successfully try to unionise low-paid casual workers.

The flow-on from the nurse's pay rise in 2005 continued with other groups in the health sector arguing for pay parity. Plunket nurses, Community Karitane and Kaiawhina Maori community health workers were offered a 13% pay increase in three installments by their employers. The Nurses Organisation said the offer was the first step in achieving pay parity between primary healthcare nurses and district health board nurses. In another development, the *Dominion Post* reported of a potential staffing crisis in the primary health providers unless nurses working for General Practitioners were paid the same as their hospital counterparts. The Nurses Organisation was negotiating with more than 650 primary health providers to seek a pay increase for 3,000 primary healthcare nurses.

The P*ress* reported that the dispute between bank workers and Westpac ended after staff agreed to an offer which included a 5.2% increase in pay as well as the development of a new pay progression system. Before Christmas 2006, the dispute had escalated into strike action by 1,700 union members (see December Chronicle).

The *Dominion Post* reported that the kindergarten teachers' union reached a "stop-gap" contract settlement with the Education Ministry. This followed strike action in December 2006 when employers announced plans to increase the hours of contact time (see December Chronicle). The settlement included a working party which will deal with the issues of contact hours and term breaks. The settlement stated that the employers must consult fully before changing their opening hours.

Over 750 meat inspectors, members of the Public Service Association (PSA), took industrial action by only fulfilling mandatory meat inspection duties in support of a

5% pay increase. The PSA said the action was being taken in response to an employer pay offer that was not good enough.

The saga at Air New Zealand continued with the focus of media attention being on a vote rejecting a proposal by the union representing maintenance engineers at Christchurch (see January Chronicle). In January, the airline had accepted a counter-proposal from the Engineering, Printing and Manufacturing Union (EPMU) and the Aviation and Marine Engineering Association. The Christchurch based members rejected the restructuring proposal by the airline and the EPMU by a narrow majority. The national airline vowed to return to a plan that would see them outsource wide-body aircraft heavy maintenance and this would result in 507 job losses, on top of 110 cuts announced in December. However, a fresh ballot of members of the Aviation and Marine Engineers' Association (AMEA) resulted in a different outcome when the majority of engineers supported the proposal.

In another development, the *Press* reported that Air New Zealand's 122 aircraft cleaners were taking legal action to prevent the airline from contracting out their jobs. The airline said it planned to hire a commercial contractor to manage the cleaning of aircraft cabins between flights in Auckland, Wellington and Christchurch. This was expected to result in saving of over $1.5 million. The current aircraft cleaners would be given the opportunity to transfer to the new cleaning services provider or take redundancy.

The *NBR* reported on the Court of Appeal decision that two women dismissed by the Inland Revenue Department (IRD) in July 2003 for accessing the tax files of family members, should remain dismissed (see December 2005 Chronicle). The court found that the employees had the code of confidentiality drawn to their attention and received training on it. They were under an obligation, therefore, to acquaint themselves with the requirements and to comply with it.

The political storm over the TVNZ Board entered the employment arena when the former chief executive Ian Fraser threatened to take TVNZ to the Employment Relations Authority if the board did not respond to his satisfaction. The issue arose after the board removed Fraser from his role as chief Executive Officer because of evidence he gave to Parliament's finance and expenditure select committee during its inquiry into TVNZ in December 2005.

The case of the Lord of the Rings model-maker James Bryson remained in the media spotlight after the *Dominion Post* reported that Mr Bryson lost his bid to take a personal grievance against film company Three Foot Six, because he did not bring the personal grievance within 90 days of the grievance happening. The Employment Relations Authority was not satisfied that Mr Bryson's evidence satisfied the requirement that he had taken "a positive step" to put his employer on notice of his grievance and he did not put anything in writing.

In another case, the *Press* reported that the Employment Relations Authority allowed a policewoman who claimed that she was given improper and intrusive internal medical examination during a police medical could apply to have her case heard despite its historic nature. The officer was sent for a recruitment medical in 1989

which allegedly included breast, vaginal and rectal examinations. When talking to fellow officers, she found her examination had been far more intrusive than theirs.

March 2006

The *NZ Herald* reported that a Bill allowing employers to freely dismiss workers in the first three months of their employment – 'The Employment Relations (Probationary Employment) Amendment Bill' - passed its first parliamentary obstacle by 63 to 58 votes after support from the Maori Party. The Bill, sponsored by the National Party's Spokesperson on Employment Relations Wayne Mapp, aimed at giving employers a 90-day trial period during which they can dismiss employees without a personal grievance claim being taken against them.

A further amendment to the Employment Relations Act 2000 was introduced into Parliament by the Government. The amendment intended to give greater protection to vulnerable employees (such as those engaged in food catering and cleaning and in orderly, caretaking and laundry services) in the event of a restructuring. The amendment was designed to cover the gap exposed by the Employment Court of so-called "second generation contracting" which can occur when an organisation has contracted out part of its business/operations to one contractor and then subsequently the contract moves to a new contractor.

Both the *Press* and the *Dominion Post* reported Government plans to rewrite the 1958 Police Act which will include changing long-standing police disciplinary procedures which were now recognised as being draconian. The existing employment conditions required Police to be suspended from duty and face a lengthy hearing and disciplinary process, which was out of step with modern employment relations legislation and approaches.

The Equal Employment Opportunities Commissioner, Dr Judy McGregor was reported in the *NZ Herald* as saying that the right to have flexible working hours should be available to all men and women who want to find a balance between work and family interests. Dr McGregor made a submission to the Parliamentary subcommittee on the proposed legislation ("the Employment Relations (Flexible Working Hours) Amendment Bill"). She stated that the legislation, which would give parents the right to ask for a change of work hours, was too narrowly focused: "Currently only parents of children under five and parents of disabled children under 18 are covered by the Bill. But what about parents of primary-school age children or dependent adult disabled children, or workers who care for their elderly parents? Their need for flexible arrangements can be just as great."

The *NZ Herald* reported that the Government has dropped plans to exempt firms with up to five employees from having to offer the KiwiSaver workplace savings scheme to employees. As originally designed, the scheme would not have applied to "micro" businesses, which represent about 86% of all firms and 23% of employees.

The *NBR* reported on the impending implementation of the Workplace Relations Act (also called "Work Choices") in Australia with its detailed restrictions on trade union activity and workplace agreements. The regulations spell out prohibited content in

workplace agreements including restrictions on the use of independent contractors, provisions for unfair dismissal procedures and a wide range of conditions that support the activities of trade unions. Australian Labor leader Kim Beazley has condemned the changes as "regulations of infamy".

The *Dominion Post* reported that Plunket nurses voted overwhelmingly in favour of a 13% pay rise, which would bring their salaries in line with those of public hospital nurses. The rise will take the salary of a fourth-year Plunket nurse working a 38-hour week from $47,430 to $53,860.

Inmate employment instructors at the Department of Corrections went on a nationwide 24-hour stop work strike. The President of the Corrections Association New Zealand (CANZ) said that members had been negotiating for an increase in pay for more than two years. Union members were asking for the same pay rates the department was paying eight non-union instructors.

Warnings of industrial action by junior doctors were raised during March. The Resident Doctors Association (RDA) tabled 19 demands including increased pay and limits on working hours as it sought to renew a national collective agreement, which had expired in January. The RDA claimed that pay rates for junior doctors had not increased for four years and the sector faced recruitment and retention problems with a number of junior doctors opting to take locum positions.

The *Manawatu Standard* reported on the reinstatement of a Palmerston North man who was dismissed for playing golf during working hours. The Employment Relations Authority determined that the man should be reinstated as a technical sales representative and be awarded back pay and costs. The company claimed that the employee was dismissed for "theft of company time", playing golf while he was supposed to be working. However, the employee argued golf was part of his job and that he always worked more than the required 40 hours a week, and the job was not 9 to 5 position.

The *Press* reported that the Government employment agency, the Community Employment Group, which was disbanded because of loose spending on community grants, had cost taxpayers an additional $3.4 million to disestablish after two-thirds of the staff opted to take redundancy payouts. The Government disbanded the Community Employment Group in 2004 and transferred its $23m budget to the Ministry of Social Development after a string of controversial grants to community organisations had featured in media reports.

The *Dominion Post* reported on threats by the Labour Department to prosecute retailers at a Lower Hutt shopping mall unless they improved staff facilities. Staff at the mall complained that mall policy meant they were unable to sit down during shifts and could not use the toilet if it meant leaving a shop unattended. Others staff complained of having to eat lunch in their cars because the shopping mall had no meal room facilities.

Lincoln University researchers claimed that once-a-day milking for farmers and sharemilkers would have a positive effect on the quality of life of both employers and employees on farms. Their research had found that employers doing once-a-day

milking had less staff turnover, sick leave and absenteeism. The researchers had also interviewed employees who said the shorter working hours enhanced their family life. Project leader Dr Rupert Tipples said in the *Dominion Post* that if once-a-day milking became more widely accepted it was possible that New Zealand may become a world leader and this might help sustain the industry's advantage.

The alleged eavesdropping by newspaper executives into private staff conversations prompted the President of the International Federation of Journalists to voice his concern. Chris Warren voiced his "deep concern" at reports that management at APN newspaper *Hawke's Bay Today* had listened in on conference calls between the Engineering, Printing and Manufacturing Union (EPMU) and staff delegates during collective agreement negotiations. The EPMU laid a complaint with Hastings police claiming that "the caller or callers intentionally and unlawfully intercepted private communications" after they discovered evidence of this kind of behaviour from phone records.

April 2006

The debate over the National Party probationary employment Bill continued during April (see March Chronicle). One commentator writing in the *Dominion Post* called it disingenuous, claiming that the Bill was a complete removal of any employment rights for the first 90 days and that employers would be able to dismiss an employee for any reason they chose no matter how well an employee was performing. It was claimed that if the Bill became law it would be 'the thin end of the wedge'. However, supporters of the Bill pointed out in the *Press* that, amongst developed nations, New Zealand was in a small minority that did not have a probation period of the type proposed by the Bill. The *Press* also reported on the polarisation of opinion amongst business groups and unions. Business groups claimed that the existing employment relation's provisions for probation periods were ineffective and urged the National Party to proceed with the Bill. The country's largest trade union the Engineering, Printing and Manufacturing Union (EPMU) threatened mass industrial action if the Bill was not withdrawn.

The *Dominion Post* reported on employer warnings to health sector workers to be realistic with their pay expectations, as health boards were struggling to balance budgets without cutting services (see March Chronicle). The warning came ahead of the renegotiation of collective employment agreements for two major groups: the 2,500 junior doctors and the 2,600 senior doctors. Other workers, including 250 radiation therapists, about 1,600 public and private lab workers, and medical radiation technologists, were also pushing for pay rises. It was reported that the largely Government-funded nurses' pay settlement had raised pay expectations throughout the health sector.

Further action in the health sector included a 14-hour nationwide strike by radiation therapists which disrupted treatment for nearly 500 cancer patients. The union's main demands concerned cost-of-living pay rises, contribution to superannuation and long wait lists (up to 20 months) while the employers had offered no across-the-board pay rises as they preferred to rely on individual merit pay rises.

During the month, concerns of a national strike by junior doctors mounted as talks with their district health board employers broke down. The Resident Doctors Association claimed a substantial pay increase and the health boards responded with an offer of 2.92%. The employers proposed a "memorandum of understanding" as part of their claim, which suggested a committee made up of health board and union staff should make joint decisions on employment conditions. One source claimed that this was a "red rag to a bull" and was almost guaranteed to provoke a hostile union response.

Patients could be charged more to see their family doctor unless the Government helped meet a $22 million pay claim from nurses in the primary health care sector. Nurses Organisation' representatives told Parliament's health select committee yesterday that registered nurses working in GP clinics would earn $195 a week less than their hospital counterparts from July 2006. The pay gap was driving nurses out of the community sector, and could threaten the success of the Government's primary health strategy.

Air New Zealand's Chief Executive Rob Fyfe was quoted in the *Press* as saying that engineers will have to make further work practice and productivity improvements to hold onto key aircraft contracts (see February Chronicle). He also claimed that there would need to be continual improvements in productivity, processes, and turnaround time to meet the company's budget targets.

The *Dominion Post* reported on the Airline pilots' union efforts in the Court of Appeal over its interpretation of public holiday entitlements recognised. The Holidays Act 2003 has spawned a number of cases over how seven-day-a-week industries treat public holiday entitlements. The airline claimed that pilots were given 11 extra days' leave in lieu of designated public holidays, and that even though they would be unlikely to be roistered to work all 11 public holidays, the airline was content to give them more days off than necessary in return for not having to pay half as much again to have them work public holidays.

A security guard was awarded $4,000 by the Employment Relations Authority after it determined that the company he worked for had an "unsafe work system". The guard had been kidnapped and robbed at gunpoint and was so traumatised by the robbery that he could not return to work. He suffered post-traumatic stress disorder after the robbery and told his employer through a lawyer that he could not keep working for the firm. The Authority found that his employer had not given him training on how to cope with the after-effects of an armed robbery, or proper support and counselling.

The very unusual case of an employee of Sky TV with bad body odour culminated in a hearing before the Employment Relations Authority. It began with a petition passed between workmates, complaining about the "smorgasbord of female smells" that had been bothering staff for months. Sky TV had the air conditioning checked and the filters changed. A fragrance-emitting unit and a fresh-air vent were moved for optimum air circulation. With complaints continuing, a female employee was called in to speak to the woman about personal hygiene. The woman resigned and claimed that she was simply victimised and harassed. The Authority found in favour of Sky TV but the *NZ Herald* reported that employment experts who read the Authority

decision were critical of it, some saying that the odour allegations could have been a psychological bullying tactic.

The *NBR* commented on the Employment Court's decision in Jesudhass v Just Hotel Ltd that changed the law on confidentiality in employment mediation. The previous position was that any communication for the purposes of mediation was sacrosanct. This was overturned, resulting in what some commentators regarded as a new and more flexible interpretation of section 148 of the Employment Relations Act 2000. This section confirms that, without the consent of the parties, a person taking part in mediation through the Department of Labour must keep confidential any statement, admission, or document created or made for the purposes of mediation and any information, for the purposes of mediation, disclosed orally in the course of the mediation. The Jesudhass case involved an employee alleging in the course of mediation that his employer, through the mediator, had relayed to him that he would not be permitted to return to work and he would be dismissed immediately after mediation. The employer denied having done this, but the employee was subsequently dismissed after the mediation. In making the decision, the court recognised injustices may result. However, the court found section 148 did not give it any choice. The court held: "Parliament has rejected [a] balanced approach and has opted for an absolute maintenance of mediation integrity at the expense of achieving justice, albeit in rare and exceptional cases."

The *Southland Times* reported on the launch of a new resource kit to help dairy farmers improve employment relations in the workplace. Funded by Dairy InSight and developed in consultation with the dairy industry, the employment health assessment kit allowed farmers to measure and, if necessary, improve their performance as employers. Based around 15 key questions, the assessment was designed to get employers thinking about the 10 main factors that affected people on farms, including recruitment, communication, performance management, working environment, remuneration and retention. ATR Solutions managing director Shaun Wilson said the kit was a first for the industry and that "the challenge for the industry was to come to grips with its employment image".

The *NZ Herald* reported on the new face of unionism who will be appearing at the May Day celebrations. The article commented that along with the ageing rump of a movement that once held governments in its sway there would be strikingly young people: casual workers in fast-food outlets, school children, 'God-fearing' Pacific Islanders, militant students, and anarchists. Leader of the Unite union Matt McCarten said that "you'll have all the old codgers, the old warriors, and you'll have the new blood". The article reflected that the increase in union membership had risen since the Employment Relations Act restored union access to worksites in 1999, however had barely kept pace with the growth in the workforce. In the private sector, the unionised workforce had slipped to about 12% and in the large retail, wholesale, restaurant and hotels sector, which employs a quarter of the workforce, union membership was only 4% in 2004.

May 2006

The Bill proposing a probation period for all new workers continued to receive media publicity. A writer in the *Dominion Post* claimed that some employees were missing out on employment opportunities because employers were not prepared to take a chance on them. The writer claimed that a whole range of people needed employers to be able to take a chance on them, including people with overseas qualifications, new immigrants, those with no recent work experience, as well as those wanting to step up in their careers or change their career path. Yet another commentator in the *NZ Herald* claimed that the proposed Bill was a complete removal of any employment rights for the first 90 days, not a genuine, agreed probationary period between an employer and employee, which the Employment Relations Act already provided.

The *NZ Herald* highlighted a meat industry report that claimed that sick leave had risen by 39% in the year to March 2005. This amounted to an increase to 81,400 sick days from the 58,600 sick days reported in the previous 12 months. Business New Zealand's Chief Executive Phil O'Reilly claimed that similar trends were visible in other industries. Interestingly, Minister of Labour Ruth Dyson urged employers to use provisions in the Holidays Act to combat workers exploiting the Act's sick leave provisions.

A claim by The Engineering, Printing and Manufacturing Union (EPMU) for a 7% pay rise for workers covered by the metals collective employment agreement was dismissed as 'crazy' by the manufacturing sector. The EPMU, (that was behind the 'Five in '05 campaign' in 2005), began the lead up to this year's negotiations with a stop work meetings in Auckland, Christchurch and Wellington.

Yet again health workers were warned to be realistic with their pay expectations, as health boards struggled to balance budgets without cutting services. It was estimated that renegotiating collective employment agreements for 2,500 junior doctors and 2,600 senior doctors could cost millions of dollars. The *Dominion Post* reported that other workers, including 250 radiation therapists, about 1600 public and private lab workers, and medical radiation technologists were also pushing for pay rises. The radiation therapists' union threatened further industrial action if district health boards did not improve their zero pay offer. Members of the Apex union were seeking a 5 per cent pay rise and its National Secretary Deborah Powell stated that if employers did not budge, a strike notice would be issued.

The decision by junior doctors to strike received widespread media coverage. With their district health board employers, the doctors had been negotiating a new contract for about six months. Resident Doctors Association's General Secretary Deborah Powell said that an official notice of industrial action had not yet been issued to district health boards and she could not say whether a strike would go ahead or for how long. Dr Powell said junior doctors have not had a pay rise in four years and were leaving their $21-an-hour jobs to work as locums for $75 to $100 an hour. Health boards had offered a 2.9 per cent pay increase, which had been rejected by the union.

The *Dominion Post* reported that the Meatworkers Union and AFFCO had reached an agreement on a collective employment agreement that covered 3,000 workers at

AFFCO's plants. National Secretary of the Meatworkers Union Dave Eastlake commented that the negotiations had been delayed by issues surrounding AFFCO's new Awarua plant. However, the union was happy with the revised deal put before them, but would not disclose what this included.

Around 200 caregivers at 11 former Salvation Army aged care homes around the country gave their union a near-unanimous mandate to call a strike in support of a pay rise. The Salvation Army had sold the homes to the Australian corporate Elder Care in 2005 and the current negotiations between the Service and Food Workers Union and Eldercare had stalled as staff had resisted cuts in their pay and conditions. At stake were: a $100-a-year shoe allowance, cuts to 10-minute handover meetings between shifts, and a 50c-an-hour pay reduction for new caregivers.

Both the *Press* and the *Dominion Post* reported that a group of Ukrainian fishermen on the boat Malakhov Kurgan locked themselves in a cabin and went a hunger strike. Four of the eight crewmen remaining on the boat at Lyttelton Port were protesting about work conditions and they had not been paid wages owed to them.

A Barman was awarded more than $45,000 after he was dismissed following three armed robberies at the pub where he worked. It was claimed that the barman went from a "happy-go-lucky" man to being "fearful in many aspects of his day-to-day life" after three robberies in three months at Richardson's Tavern, Auckland. In one robbery, a shotgun was thrust in his face. The ruling by the Employment Court criticised the Portage Licensing Trust for poor security measures against robberies at the tavern, and not doing enough to support the employee after the robberies. A stress disorder "was materially caused by the trust's breaches".

The *Independent* reported on a Waitoa tannery worker who absconded from his employer after being overpaid $3,500 in his salary. The employee mistakenly recorded his hourly rate at $201.08 instead of his usual $13. The employee reached an agreement with his foreman that he would repay the money at $75 a week and signed an authority permitting the deductions to be made. However, before the first payment could be made pursuant to the deduction authority, the employee abandoned his job. The Employment Relations Authority ordered the employee to repay $3,542.79 to his employer to reimburse it for overpaid wages and also ordered him to pay his former bosses $500 in costs. There was no appearance, nor any word from the employee.

The Waikato Students Union was ordered by the Employment Relations Authority to pay a former employee $10,000 for "hurt and humiliation" inflicted by the student union President. According to *Waikato Times*, the compensation was one of the highest sums awarded by the Authority for a grievance relating to "failure to provide a safe workplace". The Authority said that the stress suffered by the employee was at a level more serious than seen before. The employee had her employment agreement revoked when she was elected to a position on the student union executive. She was dismissed by the President of the Students Union, only for the executive to reinstate her. In September 2003, the employee took stress leave; during this period she was advised that because of financial difficulties the union was reviewing all staffing requirements. The employee was duly made redundant which she claimed was a sham but she had since accepted it was necessary. In her application to the Authority in June 2004, her grievances included feeling "unsafe in the current working

environment of the WSU" and having suffered "prejudicial and discriminatory" treatment from the President of the student union, including "violence in his looks".

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