

**Title - The Haddington Road Agreement. Will moving from a voluntarism system to a binding system work and will it deliver mechanisms that will resolve issues at local level?**

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<b>Student Name</b>	<b>Student ID</b>	<b>Course and Module</b>
Robert Tatten	13110667	MBA Dissertation

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## Abstract

The Haddington Road Agreement. Will moving from a voluntarism system to a binding system work and will it deliver mechanisms that will resolve issues at local level?

Robert Tatten

Ireland has a long history of having a voluntarism system within the public services in terms of finding resolutions to disputes. After the last recession and pressure on the incumbent government at the time by the IMF and the ECB a saving of 2 billion was required. Any dispute that existed within the public service could be prolonged as there was no binding arbitration. The agreement put in place a mechanism for binding arbitration.

A review of the impact of binding arbitration in a country that had a history of voluntarism system provided a context for the research to see whether it encourages issues and disputes to be solved at local level. The primary research entailed depth interviews with the main practitioners in drawing up the agreement.

Analysis of the findings indicates that the agreement did deliver mechanisms that will resolve issues at local level.

## Dedication

Completing this dissertation and the MBA has been due to no small part to my most wonderful family, to whom all this work is dedicated.

First and foremost, this dissertation is dedicated to my wonderful wife, Gill, for her relentless love and support to me at every turn. She made endless sacrifices for the last two years to allow me to complete a life ambition. She was always there to listen and encourage me to break big problems down into small ones. She took over management of the Ratoath under eights soccer team to fill a void left by myself.

To my fantastic three kids, Jack, Mark and Zoe who have showed extreme patience and understanding when I have had my head buried in my laptop – study is well and truly over, I'm back.

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Finally to my brother JJ who encouraged me from the outset to keep going when I had doubts as to whether I was capable.

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Student Number: 13110667

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# Chapter 1 : Introduction

## **1.0 Introduction**

This will be a qualitative research paper. The topic of the dissertation is - The Haddington Road Agreement (HRA). Will moving from a voluntarism system to a binding system work and will it deliver mechanisms that will resolve issues at local level? The HRA was signed between the Irish Government and the Trade Unions in May 2013. The author wants to research whether the HRA has the potential to deliver the change of resolving issues at local level prior to entering the binding arbitration process, within the public sector. The research will not produce figures on the amount of cases that are solved at local level the research will only look at whether the concept has worked in delivering the mechanism. The HRA is currently under the process of revision with the introduction of the Lansdowne Road agreement being voted on by the trade union members. This paper will reference the agreement brief but not analysis it in anyway.

The author has an interest in industrial relations having filled the role as a shop steward in AerLingus for six years and now sits on the other side of the table as a Senior Manager in the airline CityJet. The author believes that this experience allows him to take an independent viewpoint in the study. The author believes that the HRA will introduce a fundamental change to the industrial relations process within the public service.

## **1.1 The reason for the HRA**

There is little that countries mired in recession can do to increase GDP by giving tax cuts (as, in the case of Ireland, they don't have control of Fiscal policy) and yet they still need to increase GDP. However, they can approach the Trade Unions on the platform of a shared economic problem, and then perhaps a negotiated collaborative approach could hasten the end of the recession. This can be achieved with productivity increases that could help in attracting foreign investment, thus returning a competitive advantage to the country.



*“However labour reform is easier said than done, Germany went through a similar reform and it took 10-15 years for the country to reduce its labour cost. Germany has decreased its labour cost by 20% compared to its EZ counterparts, while the EZ has risen by 30%” (Roubini Global Economics, 2011).*

After the IMF bailout, the Irish Government had to secure a level of savings from payroll and pension from the public service, €2 billion to be exact, €1 billion was required from the Croke Park Agreement (CPA) and another one was required by the HRA. The LRC was made aware of the Governments intention to issue legislation to achieve those cuts. It was the Irish Governments preference to have a collective agreement that would secure the same savings. After the initial proposals were rejected by the trade unions, and at the request of the government, the LRC meet with all the Trade Unions representing the staff in the Public Service (Haddington Road agreement, 2013.).

Ever since arbitration exploded on to the scene to solve employment claims, a debate has been created. Those in favour have argued that it allows a form of resolution for those on low to middle income for whom the judicial system isn't an option. Those against the system have argued that arbitration is a second class justice system where employers force agreements on employees (Bales and Plowman, 2008).

The background of the study is that the HRA, made between the government and the public servants unions, has put a mechanism in place that is intended to solve industrial disputes at local level. A lot of the savings delivered in the agreement are meant to yield increases in productivity by doing more with less people. It –came about post the agreement made with the IMF (International Monetary Fund) in 2010, and unsurprisingly focused on measures relating to public sector reforms (Doherty, 2013). If agreements can't be reached at local level, then they will enter the industrial relations dispute mechanism, which will involve the Labour Relations Commission (LRC) and then the Labour court.

Prior to the HRA, arbitration issued by the Labour court was not binding on the public service unions. The intention of the HRA is to make arbitration issued by the Labour court binding, which in turn should influence the need for decisions to be made at local level. The fact that binding arbitration could be issued on the groups in dispute should have an impact on the discussions at local level because decisions referred would remove their control of the resolution. In contrast however, author Curran had a different opinion in that the lack of a settlement in a dispute does not indicate a failed process (Curran, 2014). The move towards a settlement is a better indicator of the success of the mediation process (Curran, 2014). The research will show whether this is, in fact, the case.

Using other literature this study will research whether binding decisions on both parties have created a different dialogue at local level, in other countries. The literature review will look at the benefits of the different types of binding arbitration researched. The research will also look at the binding arbitration mechanism in other companies in the United States of America and the solutions they have in place for dispute resolutions.

The research will entail interviews with the Chief Executive Officer of the Labour Relations Commission, Senior figures; within the management of the public service and Trade Union Officials, Local Branch Representative, all of who have been involved in the agreement. The interviews will be semi-structured and question based in order to have a formatted standard approach to each interview. The questions will be a key part of the process and further study and advice in this area will be needed to yield the right results from the interview.

The dissertation will be broken into the following chapters;

- Introduction
- Literature Review
- Methodology
- Analysis and findings

- Conclusion and Recommendations

The conclusion of the report will show whether or not the HRA has had the impact on the industrial relations process in the Public service. It will also show whether the threat of binding arbitration has an impact on agreeing resolutions in disputes at local level.

### **1.2 Limitations**

It is limited to 15,000 words and six months research. The author has had difficulty in sourcing academic papers on the topic. As this is a relatively new topic the author contacted Prof Bill Roche in UCD, who suggested researching the ILO for literature to review and who also confirmed to Dr Colette Darcy that literature for review was not available.

### **1.3 Research Method**

This is a primary and secondary research method. The information is researched from interviews, books and journal articles, from various authors on the subject matter and recommending guidelines issued by the International Labour Office. The paper includes the summary and collation of research and opinions.

## Chapter 2 : Literature Review

### **2.0 Introduction**

As referred to in the limitations, there is a lack of literature on the topic of the HRA largely due to the fact that the agreement is new and relatively untested. Notwithstanding this, binding arbitration is quite prevalent in the United States. A review of the literature, primarily of U.S. sources, has therefore been undertaken. While carrying out this literature review the author has been introduced to alternative methods of arbitration. In addition, and because of the limitation with literature to review, the author contacted, through the National College of Ireland, Prof Bill Roche in UCD, who suggested researching the ILO for literature to review. In order to give a better insight into the research the author has built in these alternative methods into the methodology of gathering data analysis in the conducted interviews.

These sources have been bolstered by exploring the relevance of the guidance issued by the International Labour Office (ILO) on the process of arbitration within the Public Service.

### **2.1 Non-binding and binding Arbitration in the Public Service – ILO Guidance**

Following on from the introduction to the literature review, we will next review the guidance issued by the ILO in relation to the process of arbitration within the public service. The public service accounts for a significant proportion of employment in most countries, in 2015 the Irish Public service employed 374,600, which highlights the complexity and challenges for the HRA (Central Statistics Office 2015). The ILO therefore has a significant interest in promoting international standards on this employment sector worldwide.

The collective bargaining process is one of the core principles of the ILO and inevitably forms part and parcel of regulations of labour relations in the public sector. The state is one of the largest and single most important employers in all countries. The public service employs people at regional, central and at local levels within the state. The public service has to provide high quality

services at all these levels and there was a need for the sector to provide value for money. The most recent recession, which brought about the HRA, affected governments in all developed countries particularly within the European Union and this is the reason the ILO developed tools that would assist governments affected by the recession in their discussions with their public service representatives. The recommendations issued by the ILO are not international treaties per se but they are non-binding guidelines forming an integral part of the 'system'. The ILO has issued guidance on each stage of the process, starting with negotiations, facilitation and arbitration. However for the purposes of this dissertation the primary focus is on the last / final stage in the process.

The ILO recommends that dialogue and bargaining should be key contributors to public sector effectiveness, performance and equity and, because of competing interests are involved, neither can ever be conflict-free. Governments and public sector unions are encouraged to maintain dialogue, consultation and, importantly, bargaining within the public sector, where industrial peace carries a special premium in the public mind, and where considerations of conflict management must be topmost priority. This conflict management facility attains even greater relevance and importance in times of fiscal consolidation and austerity measures. The necessity for arbitration at the final stage is ultimately to ensure there will be some form of finalization of any dispute (International Labour Office, 2011).



Figure above illustrates the process of industrial relations recommend by the ILO (International Labour Office, 2011, p. 132).

Arbitration is seen as the next stage following mediation in the dispute resolution chain. Involuntary arbitration occurs when both parties in the dispute recognize that their own efforts will be insufficient in delivering a resolution to the dispute. It is accepted and understood by the negotiating parties that the issues dividing them will be placed, on a voluntary basis, before an independent third party. The arbitrator is empowered, either by contract or by statute, to consider evidence and arguments made by both sides and to then make a binding decision on the matters in dispute. In economic disputes, two modes of arbitration can be acknowledged. The typical mode sees the arbitrator free to determine a result, (for example a wage dispute) as long as the result remains within the arbitrator's terms of reference. At times the final award may reflect a compromise between the union's claim and the corresponding offer presented by the employer. If both parties believe that the arbitrator is likely to split the difference between both claims, the temptation to exaggerate opening positions, both in negotiations and the arbitration process, is quite likely. Clearly, this has the potential to obstruct and inhibit the satisfactory conclusion of voluntary settlements (International Labour Office, 2011).

To counter this possibility, the "final offer" mode of arbitration was conceived. Here the arbitrator does not split any difference but adopts either the union's claim or the employer's offer. If one party makes an extreme case and the other a more modest one, it is likely the arbitrator will opt for the latter. With both parties aware of this, it encourages them to moderate their respective opening position and thus moving them closer to 'common ground. This approach is central to the aims of the Haddington Road Agreement. If both parties accept the need for moderation in their respective positions, it makes the solution relatively easier for them to accept and indeed motivates both parties to conclude their own negotiations without recourse to the arbitrator (International Labour Office, 2011). Final offer arbitration may take one of two formats;

1. The arbitrator, by his or her terms of reference, decides to award the entire position put forward by either party.

2. The arbitrator is asked to award on an item-by-item basis, probably awarding an even amount to both parties.

Generally arbitration is not subject to appeal but it has been the case, especially in Ireland, which is the reason for the creation of the HRA. It is the basis of this research to see if the change to binding has the effect of resolving issues at local level, as reviewed by the ILO.

Next we will review the guidance of specific mediated arbitration as a step proposed by the ILO prior to binding arbitration discovered in this literature review.

The system in Australia is a variation on a similar theme in that the mediator also acts as the arbitrator. The mediator/arbitrator will assist the parties in settling the grievance by mediation. Where agreement cannot be reached the mediator/arbitrator will arbitrate on the dispute. This approach is discussed by author Berman (1994) who suggests in this stage of arbitration that the parties involved realize that if they don't settle the case, they will be forced to submit the case to arbitration after the mediation phase has failed (Berman, 1994). In the Australian process the mediator/arbitrator may impose conditions as he or she considers appropriate. The decision is given to both parties within five days unless agreed by both parties to extend beyond that date. There are however reservations by some parties that someone is able to actually mediate and arbitrate on a particular dispute (International Labour Office, 2011).

The ILO favors the practicality of a med-arb process where a different professional discharges each role. Depending on the particular dispute nature of the issue, the volume of matters and the resources available, the process can allow that in the event of the med-arb process failing that the matter in question can be referred straight to final arbitration (International Labour Office, 2011).

Med-arb (or con-arb) has been implemented with some degree of success in South Africa in interpretation of collective agreements and disputes surrounding dismissal. It is also successful in different areas of employment in Australia both public and private sector. In the State of New South Wales, when employees have a dispute that relates to their compensation the first stage can take place in a telephone conference environment and if matter has not been resolved, it can go straight to arbitration (International Labour Office, 2011).

Consideration will now move to a review of the guidance given by the ILO on binding arbitration.

Following on from mediation arbitration procedure this section will review the guidance given on compulsory binding arbitration. According to the ILO compulsory arbitration should be used with some caution. It is possible that certain principles of international law could be breached unless specific agreement is reached by both sides that it forms part of the conflict resolution process by the parties involved (International Labour Office, 2011). The ILO recognises the need to have this system in place when services provided by the members of a trade union are essential for society, an area that the author covers in his primary research questions.

One benefit ascribed to the compulsory arbitration is that it encourages the parties to review realistic awards in order to set their Best Alternatives To a Negotiated Agreement (BATNAs) and Worst Alternatives To a Negotiated Agreement (WATNAs). There is evidence from Canada and the United States (International Labour Office 2011) that shows compulsory arbitration produces outcomes similar to comparable non-arbitral, collectively bargained agreements. The ILO have produced interesting evidence that states that the average base wage rate annual increases for collective agreements covering 200 or more workers over the period 1998 to 2009 in the public sector for cases heard was 2.7% for non-arbitrated and 2.5% for arbitrated. There were 407 agreements involved in arbitrated cases and 2,842 in non-arbitrated. Comparing this against the private sector, the base wage rate average



obtained for the private sector in arbitrated processes was the similar: 2.5 per cent (International Labour Office, 2011).

In New York State, research into the essential services' area, (including police and fire fighters), over a period of thirty-three years (1974 to 2007) indicates that a conflict management system based on involvement and consent will consistently deliver results that are acceptable to both sides (International Labour Office, 2011).

Compulsory arbitration can also work when both parties have agreed to enter that process as part of their collective agreements. This model can be found in Norway, where senior civil servants have no legal right to part-take in industrial disputes. They retain the same bargaining rights as other employees represented by trade unions but, because their role is deemed to be necessary for society they cannot part-take in any dispute. Their case is referred to the compulsory arbitration system and the decisions made at this last stage of the model are compulsory and binding on both sides if earlier negotiations have been unsuccessful.

In researching the ILO paper on arbitration the author has found that a well-calibrated arbitration statute allows the option of the extension or resumption of bargaining.

## **2.2 Alternatives to binding arbitration and employment disputes**

Following on from the standards set down by the ILO the literature establishing alternative processes other than set down in the HRA has been reviewed. These alternative processes will provide the author with a wider knowledge in the area and so help to frame the qualitative research questions used as part of the research strategy. A significant amount of attention has been given to binding but there are circumstances in which non-binding remains a more effective option. According to Bennett (2006) this process rarely receives the attention it deserves (Bennett, 2006). Bennett argues that non-binding arbitration may appear inefficient but this, he stresses, is primarily

down to the implementation of the process. If it is implemented effectively, the process can serve several useful purposes and benefits.

“When practitioners think of arbitration, they usually mean a process that result in a final, binding and enforceable award, which serves as an alternative to litigating in court. But there are many circumstances where a process that is not as binding as arbitration may be useful to parties involved in a dispute. Non-binding arbitration may be what the circumstances demand. However, this process rarely receives much attention“ (Bennett, 2006, p.23).

The design of an Alternative dispute resolution (ADR) processes can range from simple and voluntary to complex and compulsory. The simplest process involves having a mechanism to settle the discussions that both parties bring to the table. The parties have the flexibility to take part in these discussions either on the telephone, video link or in-person. The parties can meet when they desire as many times as they feel is necessary, agreeing to the format of these discussions in advance. Bennett believes that unless a court or other legal entity makes a ruling on the dispute the process remains one of voluntarism and flexibility (Bennett, 2006).

The next step in the process suggested by Bennett is mediation. This introduces an independent neutral third party who is agreed by both parties. The role of the mediator is to assist and encourage an agreement with the disputants in order to resolve their differences. The mediator aids the talks by asking each party to make their position clear to each other in-order to establish clarity around the underlining issues and the expectations and secure common ground (Bennett, 2006).

Bennett emphasizes that when non-binding arbitration is implemented effectively it can serve a multitude of different purposes. Firstly, it may allow a format whereby discussions will take place in the knowledge that further down the road an arbitrator may decide the case; one of the central reasons behind this development of the research in this dissertation. Bennett in this context suggests that it can lead to the delivery of a mechanism which seeks

to secure agreement at local level. Secondly, whatever the award it remains an advisory one so the arbitrator cannot be accused of not following the process or having ignored the relevant legislation in their findings. Bennett concludes that non-binding arbitration eliminates the need for an appeal against an unfavorable decision, thereby reducing excessive time and cost issues. A party who still disagrees with a non-binding decision and then decides not to settle may take the dispute into a legal environment. However, this decision can prove costly to the party in dispute; it is therefore expected that the likely implications will deter parties from following this route (Bennett, 2006).

So to summarise Bennett believes the benefits are:

1. It can provide important information to both parties about how the case might be decided.
2. As the award is advisory, there is less need to argue that the arbitrator failed to follow proper procedures or ignored essential evidence. This eliminates / lessens the potential for appeal against an adverse decision, thereby reducing the potential for costliness and time consuming extensions to the process.
3. It shares the benefits of binding arbitration but the parties can agree to keep the exchange of information confidential. The parties can also agree to the arbitrator that makes the binding decision (Bennett, 2006).

Bennett discusses the need to have an agreement in place for non-binding arbitration. The agreement is entered into in writing by both parties prior to the start of any working relationship. If the parties cannot enter in an arbitration agreement, they can agree to the dispute being referred to arbitration after it starts in an effort to find a solution.

When both parties are drafting/negotiating their agreement, Bennett suggests they agree on the nature of the recommendation that might be made i.e. whether the process should make a recommendation that is non-binding and advisory only. The disputants should also agree as to whether the

recommendation is one that is final within specific time limits unless one party objects and requests a trial or arbitration (Bennett, 2006).

The parties should also agree as to whether the services and rules of an arbitration service provider may be utilised, and whether they have any parameters within which the arbitrator must be confined. An agreed regulatory framework should be developed to reflect these agreed terms and conditions. Whenever parties contemplate entering a non-binding arbitration agreement, they and their legal representation should be aware of all the issues that could affect the proceedings of the arbitration (Bennett, 2006).

To emphasise the argument Bennett comments: "It is not foolish to ask whether an award rendered in a non-binding arbitration is truly not binding. The answer is "no" if the non-binding arbitration was ordered by a court or government agency and neither party takes the steps required to avoid the award." (Bennett, 2006, p.25).

Bennett goes on to state that the parties' agreement should say that, all things being equal, the award will become final within a stated period of time, unless other conditions / objections are initiated. The type of conditions he refers to include: service of a notice, or filing an objection to the award or a request for a trial *de novo* within a specified period after issuing the award. He goes on to say that the process can be somewhat altered where the parties to the negotiations agree beforehand that any award will be advisory only and non-binding. For clarity and flexibility, the parties may also wish to include conditions such as the following:

- The award cannot be entered as a judgment in any court (except by the agreement of both parties involved).
- The award may not be used as precedent in any court, arbitration, or other proceedings.
- The fact that the non-binding arbitration took place, and any award or evidence from that process may not be referred to in any subsequent cases (Bennett, 2006).

Bennett's review of non-binding arbitration is grounded in a comprehensive review of data within the United States of America. It is, of course, recognised that this model would be effective in the Republic of Ireland but further research of "Attitudes towards mediation: U.S., Great Britain, and Ireland." (Krislov, Mead & Goodman, 1975, p.58) suggests that mediators tend to adopt different approaches in the countries covered in this study. Discussed by Bennett for evidence as to why American mediators tend to press vigorously for solutions and are considered more aggressive than their counterparts in Ireland and Great Britain.

The research of Krislov, Mean and Goodman although relatively dated at this stage, remains valid when drawing challenging conclusions that while the attitudes explored remain relevant to the American system they may no longer reflect attitudes in the Irish industrial relations system – particularly in the State sector. The article 'Attitudes toward Mediation: U.S., Great Britain and Ireland' states the preferences of the majority of those surveyed (75% of those surveyed) were for a more forceful mediator in Ireland; commenting both trade unions and management would prefer this method. American management were less favourable with 57% of those surveyed being in favour. This is an interesting view which will be critically analysed with the data gathered from the qualitative research. The research in respect of the two countries was not consistent on the view mediators should vigorously support a position taken by one side in a meeting. In America unions and management do not support the mediator holding separate sessions whereas in Ireland both sides support this approach to mediation (Krislov, Mead & Goodman, 1975).

Following on from Bennetts alternative to binding arbitration has been the innovative process of Peer reviews. In this context when a dispute occurs, a panel of fellow co-workers is established to consider the issues (Marcum & Campbell, 2008). A number of legal arguments to using this process of peer review have been identified and these arguments will be reviewed to secure a more informed understanding of the process and to aid the research on binding arbitration within the dissertation.

### **2.3 Peer review process**

Peer review represents an alternative to binding arbitration. In Peer review the arbitrator can still issue a binding decision but this can then be challenged through the legal system into the civil court. However research shows it a rare occurrence for a court to overturn a binding decision such issued. In various sectors such as education, the peer group can only issue recommendations and these can prove somewhat contentious. Marcum and Campbell explain that there continues to be ongoing disputes in court that relate to binding decisions issued by Peer review committees (Marcum & Campbell, 2008). In general, peer groups have no authority – legal or otherwise - to make binding decisions as primarily, they are not legally competent but are rather workplace peers. The other significant concerns centre around whether the capacity of the peer review group remaining neutral and objective given they are part and parcel of the workforce and employees of the business yet are still required to make judgements affecting conditions of employment or work practices. The need for the committee to operate within a statutory framework so as to protect the group from being overly influenced by management is identified by Marcum and Campbell (2008). Peer review committees tend to avoid dismissing with Marcum and Campbell stating that “According to recent statistics, employees who file grievances prevail in arbitration 63% of the time compared to only 15% of the time in litigation” (Marcum and Campbell, 2008, p. 55).

The benefits ascribed to peer review committees appear anomalous in some aspects. For instance, the motivation to establish a Peer review process appears to include a desire for trade union avoidance. It also facilitates an effective grievance system. Marcum and Campbell go on to say that local management and immediate supervisors tend to take greater care in sticking to the process with disciplinary actions when they are aware that their actions will be subject to scrutiny and objective review. From a management perspective, it could be helpful in the long run to have a group of employees who are trained to deal with the issues brought to them. Those employees could also have a considerate understanding of the difficulties faced by the manager’s disciplinary meetings. The same can also be said from a staff

representative group who want to have a management team trained in the skill of negotiating (Marcum and Campbell, 2008).

In the qualitative research the author found that the Peer review process was unfamiliar to the participants. Marcum and Campbell have also said that it could be referred to as; associate review board, joint employer/employee, and grievance board. Peer review panels are generally established at the instigation of the employer and the details and modus operandi of the panel included in the employment handbooks or employment manuals. While largely dependent on the process and its construct in the handbook, the group and its output could create a contractual relationship between the employee and the employer (Marcum and Campbell, 2008).

The legality and validity of newly developed processes laid down to find resolutions for employment disputes raises important questions. These questions are most relevant when the peer review process results in a binding decision on both parties that precludes the possibility of recourse to litigation. It would appear that the principle reason for introduction of a peer review process into the workplace is to seek the engagement of employees at different levels of a company by appearing to provide a vehicle to voice their opinion. Companies can encourage the acceptance of the process as it can be seen as a method to capture the productivity improvements generally associated with enhanced worker involvement thereby improving competitive advantage in the market place. Employees can, it may be argued, also be beneficiaries, finding enhanced fulfillment in their jobs and greater input into the how they perform their jobs. This opinion is supported by authors Lavelle, McDonnell, and Gunnigle in their book 'Human Resource Practices in the Multinational Companies in Ireland' (Lavelle, McDonnell & Gunnigle, 2009). Lavelle, McDonnell and Gunnigle also reference to the fact that employees want to have a voice in their work and their workplace and the Peer review gives employees an appreciation of the company's goals and obligations.

The authors Marcum and Campbell highlight that the Peer review strategy of management to encourage worker-management cooperation by increasing

employee participation in decision making while enhancing the cooperative ethos in the workplace is more and more common strategy by management in all industries. In the research of Marcum and Campbell they have found companies that have peer review groups implemented, often have lead to organizational innovation, which is a key driver for companies in economic growth (Marcum and Campbell, 2008). This may be viewed as a HR strategy to remove union involvement. It is not necessarily a strategy that would work in Ireland contrasting as it does against the research, of Roche, Teague, Coughlan and Fahy in 'Managing and Representing People at Work in Ireland' (2009). They claim, in their research, that Unions are being viewed as realistic and pragmatic and a necessary requirement for all collective bargaining (Roche, Teague, Coughaln & Fahy, 2009).

Marcum and Campbell state that the group can collect testimonies, review documentations, and make decisions on all workplace related disputes when all the facts are presented to them, with the main objective of engaging all employees in the process, giving them a greater voice and in turn improving company operation (Marcum and Campbell, 2008). The peer review process must also be binding on management and not merely making suggestions to management. Training employees involved on the committee helps to improve communication and listening skills and ensures better understanding of the policies (Marcum and Campbell, 2008). Concluding the Peer review process, Marcum and Campbell state the ability to resolve employment issues using internal systems benefits both employees and the employer. "Just, effective, and efficient internal decision making can be accepted by all" (Marcum and Campbell, 2008, p. 56).

It is claimed that Peer review has many advantages for the employee. Peer review panels provide mechanisms for including employee's opinion into non-union dispute procedures in the workplace and aids employee confidence in the process. To work successfully Peer review arbitration panels should have the freedom to draft and publish resolutions, reflecting the employers and employees opinion and that both sides to the dispute can actually implement



without the threat of being opposed in a legal setting (court action) (Marcum and Campbell, 2008).

The peer review process must be one that is binding on management, not one that is seen as making suggestions to management, that are subsequently ignored, if this happens then employees will lose any confidence in the process. If the panel does not have full power without dealing with management, then the management team is seen to dominate the peer review process and, thus, the process becomes unworkable and potentially illegal. If the decision of the peer review panel is binding on both the employee who has raised the grievance and management, the process only receives “input” from management, and the panel is neutral and is fully trained to defend statutory rights (if these are involved in the case), then it is proven not to be subject to management influence and will survive challenges in a legal setting (Marcum and Campbell, 2008).

If employees are implementing a peer review process they should insist on a fair arbitration agreement. Employees should also insist from their management that members appointed to the panel should receive the correct training so that they can ensure all claims made to the panel are determined by an educated opinion. The employees should also insist on fair peer review procedures in order for the method to work effectively. To be considered fair, the panel should not impose costs on the employee who has raised the grievance (Marcum and Campbell, 2008).

In the majority of disputes, peer review panels should be advantageous to employees. Peers are likely to view the testimony of an employee as realistic. Peers appear to be reluctant to dismiss peers from their employment (Marcum and Campbell, 2008).

The most significant disadvantage associated with the peer review method is that the statutory claims of employees may not be adequately protected. Peers usually do not have any relevant competence and adequate training, legal or otherwise, that will safeguard the statutory rights and obligations of

both employees and employers. Peer review may best be utilised in cases of disputes that involve areas such as work rostering, discipline and workload allocations. Peer review may be used for fact-based decision making; for example as to whether a company policy has been adhered to. Marcum and Campbell advise that the system should not be used for disputes that involve employee statutory and legal rights (Marcum and Campbell, 2008).

A second disadvantage of the peer review method is that it is questionable whether the peer review panels can actually be viewed as separate to the management control. The members appointed on the panel remain employees of the business, and so may find it extremely difficult to separate themselves from the possible consequences of their actions; in reality participants may fear pressure that management may impose sanctions on foot of decisions taken. However given that trade union officials in Ireland, have statutory protection, such perceptions of fear and retribution have less potential to arise. However employee intimidation by management remains a realistic concern, likely to inhibit employee loyalty and engagement. An associated purpose of peer review is to improve employee contentment in the workplace. Research has identified a relationship between worker satisfaction and productivity enhancement. It would appear therefore counterproductive for management to intimidate employees in the execution of their role on the review group. A possible way to alleviate the possibility of this occurrence might be to exclude management from the decision making process and participating in the peer review. Alternatively the decision-making process of the committee could be securely confidential with voting patterns remaining secret – although this would not obviate the collective responsibility of the group (Marcum and Campbell, 2008).

Marcum and Campbell summarize by saying the critical features of an effective Peer review panel would be to incorporate points relating to all working conditions. Employment contracts must contain peer review clauses outlining the processes and procedures that must be carefully drafted to be reasonable to the employees. The members of the peer review panel must be appropriately trained to handle all the issues brought before them. Issues of

legal and statutory rights should never be brought before a peer review panel that is not adequately trained to review them. Statutory rights being complex, employees cannot be properly trained to effectively vindicate the rights of the employee. The panel should primarily deal with noncomplex issues confined to workplace physical conditions / environment, rostering and employee behavior that are appropriate for referral to peer review panel. The ability to resolve employment issues using an internal system would appear to be appropriate to insinuation into the matrix of HRM strategies with both the employer and the employee feeling empowered to positively affect the performance and direction of the company.

#### **2.4 Anheuser-Busch process**

The authors Bale and Ploughman found that Anheuser-Busch has a very successful Dispute Resolution Program (DRP). This article starts from the principle that much can be learned from examining well-drafted and well-implemented employment dispute resolution programs. These type of programs can provide employers with a model for drafting fair, ethical, and enforceable dispute resolution programs. They provide a standard to courts in their decisions of whether to enforce other employment dispute resolution programs. Finally the writers claim that this type of program supports the positive conclusion about well-established procedures and undermines the generality of the comment that all arbitration processes are corrupt (Bales and Plowman, 2008).

The Anheuser-Busch Companies currently run one of the most extensive and well-developed programs for the non-judicial resolution of employment disputes. The Dispute Resolution Program (DRP) combines binding arbitration with an inclusive dispute resolution process, focusing on fairness, communication and early resolution in disputes. At the time of this article by Bales and Ploughman, the method in Anheuser-Busch had been in operation for ten years and the program has been very successful for both reducing the companies outside legal bills and finding early resolutions to disputes.

There were several factors that led Anheuser-Busch to investigate the possibility of creating a workplace ADR program. The first was the company wanted to improve and open lines of communication between management and employees in order to resolve disputes in the workplace. This factor originated out of a court action in which the company identified that there was a lack of any effective processes for employees to approach management with their concerns. Lacking such a process, left the company in a position that the first they knew of such a dispute was when they received notice of legal action being taken against the company (Bales and Plowman, 2008).

The second factor underpinning the establishment of the process was the reduction of the company's continuing legal expenses. Given its size and organizational complexity the company had had to devote a considerable amount of time and money to resolving its legal affairs – including matters relating to employee contractual issues. It was recognized that an employee relations strategic framework that provided for a fair hearing for employees with a consequential reduction in time and monetary costs would prove beneficial to all sides.

Emerging from the above company management identified the need for a process which sought to provide fair, objective and timely resolutions of employee disputes. These three factors encouraged the company to head in a direction of workplace ADR process.

Bale and Ploughman examines in detail the Dispute Resolution Program in Anheuser-Busch. They show that it is possible for an employment dispute resolution program, which culminates in binding arbitration serves;

- (1) Employer's objective of containing employment litigation costs.
- (2) Employee's objective of right to use to a fair forum for resolving employment disputes.
- (3) Both parties' objective of promoting the non-confrontational resolution of employment disputes.

The article found that the DRP was particularly successful in finding early resolutions and reducing outside legal costs. The programme had been running for ten years (Bales and Plowman, 2008).

Anheuser-Busch demonstrates that compulsory arbitration and employee fairness do not have to be mutually exclusive. In 2007 the company invested a significant amount of time and money rolling out the programme, meeting with employees involving in the design of the programme.

The programme involved three levels; (Bales and Plowman, 2008).

1. Level one – Local Management Review. An employee raises a form that includes the dispute and this is then reviewed by the local Human Resources representative for a decision.
2. Level two – Non-binding Mediation. An employee pays a fee of \$50 to have their dispute heard. This stage involves a mediator in the dispute. The mediator is experienced and selected by the employee and the company. Written summaries from both parties are submitted to support the claim. The mediation is quite private.
3. Level three – Binding Arbitration. An employee pays a fee of \$125 to have their claim heard. The decision is final and binding on both parties.

The article by Bales and Plowman found that it is possible to have a DRP that both meet the company goals, while simultaneously delivering a fair dispute resolution for employees (Bales and Plowman, 2008). A large amount of disputes illustrated in the figure below are resolved before the arbitration stage so this supports the study and gives evidence that the threat of arbitration further down the process aids agreements at local level.

The figure below illustrates the low number of disputes going to arbitration (Bales & Plowman, 2008, p. 26).

YEAR	LOCAL MANAGEMENT REVIEW (Level One)	MEDIATION (Level Two)	ARBITRATION (Level Three)	TOTAL
2003	592 – 96.1%	19 – 3.1%	5 – 0.8%	616
2004	569 – 95.8%	21 – 3.5%	4 – 0.7%	594
2005	217 – 92.3%	14 – 6%	4 – 1.7%	235
2006	113 – 85%	18 – 13.5%	2 – 1.5%	133
2007	78 – 100%	0 – 0%	0 – 0%	78
<i>Total</i>	1569	72	15	1656
CLAIMS RESOLVED	95%	4%	1%	
ACTIVE CLAIMS	16	6	3	

Figure 1. Historical data of claims settled, indicating the level at which disputes were settled under the DRP. Total Claims in Data Set = 1656.<sup>168</sup>

The author intends to raise the Peer review process and the Anheuser-Busch when conducting the interview process, to aid the discussions about alternative mechanisms that encourage disputes to be resolved at local level prior to arbitration.

## 2.5 Conclusion

Through the literature review the author has focused on the arbitration. The main focus on this dissertation is to establish whether moving from voluntarism to binding will deliver mechanism that will resolve issues at local level. In the literature review the author has researched some contrasting theories on binding arbitration. The author has researched the guidance issued by the International Labour Office around the topic of binding arbitration and when they viewed it should be used in terms of settling disputes. In contrast the author Bennett also had the view that non-binding arbitration can be just as effective if implemented correctly. Of particular interest were the different approaches within the US of the Peer Review and Anheuser-Busch process. The author will cover this literature in the qualitative research.

## Chapter 3. Methodology

### **3.0 Introduction**

Following on from the literature review, the author will now discuss the methodology undertaken for this study. The purpose of this chapter is for the author to outline the consideration for the methodology chosen to conduct his research. The chapter will also discuss the reasons for choosing the method selected. It will also explain the rationale, process, sampling of the participants and the method used for collecting the data. The research question and the sub-objectives in terms of the information the author requires answering the question. The research problem that the author is going to research is whether the change associated with the HRA moving from voluntarism to binding arbitration is actually working or whether the literature reviewed has other solutions that may be worthy of further research.

The primary objective is to establish whether the HRA, moving from a voluntarism system to binding, will work in delivering mechanisms that will work in resolving issues at local level.

In order to understand the factors that influence negotiations at local level, it will be necessary to conduct the review with all parties involved in the process.

The first sub-objective is to ascertain whether the HRA is in favour of management.

The second sub-objective is to ascertain whether the HRA is in favour of trade unions.

The third sub-objective is to ascertain whether the processes of binding arbitration reviewed in the literature, Peer Review or the Anheuser-Busch system, would be an alternative method to the people involved in the qualitative research.

The fourth sub-objective is to ascertain if many local issues have been referred to the binding arbitration process.

### **3.1 Research Approach**

Interviews are normally classified as a qualitative method for gathering data, quite often displays and focuses on the following characteristics; (Horn, 2009).

- Exploratory in nature.
- Using natural, existing, contexts and settings.
- Interested in the meanings, understandings and perceptions.
- Findings from the research are specific to the context in question.
- Data is specific and not generalised.
- Using induction for data analysis.
- The research focuses on processes.

The author Horn states that qualitative approach is often used as the most appropriate approach when the topic being researched is not well defined or understood by current theory or research. This is the case with this project and the HRA, as discussed earlier (Horn, 2009).

According to the author Horn, qualitative research is interested in developing and exploring meanings, understandings and perception. An effective way of gathering this type of data is interviews. Qualitative focus on the process, not the outputs and interviews, can be an effective means to understand the process and the participant can explain their meaning of the process (Horn, 2009). The author of this paper decided that in order to gather meaningful data it was necessary to conduct semi structured interviews.

Prior to the interviews being carried out a review of available literature was carried out in the literature review chapter. This was necessary to give the interviewer a greater knowledge in the area of binding arbitration and the different methods that are adopted in different countries. This allowed the interviewer to have a broader range of questions when conducting the interviews.

### **3.2 Interview skill and style**

In Horns review he highlights the importance of planning, developing and plotting the interview with great care. He goes on to further discuss the point



that the skill required to prepare a questionnaire is quite different for the skills required to conduct an interview. The author has taken note of this point and has spent time in preparing the interview questions and setting. Interviews are predominantly about listening and you have to develop the skill of active listening. When interviewing the interviewer must show the interviewee that every word is being listened to. Body language therefore assumes centrality of importance in terms of the interview; typically the influence of hand movement, eye contact and posture must consistently be considered (Horn, 2009).

Using clear and simple language is an important part of the interview. The questions must be objective and devoid of bias. They must of necessity be direct and open to ensure that the interview succeeds. It is also advisable to avoid jargon and abbreviations when conducting an interview. Compounding and overly-complex questions should be avoided also. If the interview is conducted correctly there will always be the opportunity to ask an additional question or develop an answer given (Horn, 2009).

### **3.3 Empathy in the Interview and location**

Horn (2009) stresses the importance of having empathy for the participants, in order to lead for a better interview. The author has used his previous experience as a Union representative in Aer Lingus as part of his introduction prior to completing the interviews with the trade union representatives. This helped set the context for the interviewer and enabled the interviewer maintain objectivity in designing and managing the event as it unfolded. Horn mentions that having empathy is very important in building up the level of trust essential for an effective interview (Horn, 2009).

For example, participants were asked if the author could visit them in their own location to conduct the interview; this provided the interviewee with the security and comfort of their own 'home patch'. Horn refers to the location as an important part of the interview as the participant generally feels more at ease in familiar surroundings. It is equally important to set an agreed timeframe and to end and leave the interview in that time period. It is very

important that the interviewer is organised, on time, precise and clear in all the communications (Horn, 2009).

The author Horn also discusses the importance of having observation skills to focus and record the unsaid aspect of the interview. Such as eye movements, pauses, reluctance, sighs, deep breaths, and eye movements and the importance of taking notes of these through the interviews. Although the potential for bias interpretation will exist and must be recognised the reading of a respondent's body language to a question may provide valuable additional information for the interviewer. A lot therefore can be screened from face to face meetings that cannot be recorded over the phone. Once the interview has been completed it is important to record these reflective notes as soon as possible. Also important to observe is the reluctance to answer a question that will allow a skilled interviewer to probe further. Probing these areas of the interview can lead to gathering some insightful information (Horn, 2009).

### **3.4 Types of interview**

According to Horn there are two types of interviews structured and unstructured. Structured interviews are predominantly used in situations where the research problem is well defined. In these types of interviews the interview is testing aspects of the research problem. In contrast, unstructured interviews are freer flowing and not defined. In these types of interviews it allows the participant to express their views without feeling constrained to predetermined questions.

The author has read the guidance from Horn. It has been decided to use a semi-structured interview with a mix of open and closed questions. All questions for the interview in appendix A have been sent to the author's supervisor prior sending to the participants for review. Based on the feedback received by the author the questions have been amended to allow a freer flowing interview and facilitate more probing questions during the course of the interview.

### **3.5 Sample and format of the questions**

To reiterate, the objective of the interview is as follows:

*'In terms of the HRA, will moving from a voluntarism system to a binding system work and will it deliver mechanisms that will resolve issues at local level?'*

The research strategy will involve a range of in-depth exploratory structured interviews. They will be relatively straightforward to arrange and they will be designed to allow for expression of non-conformity and free exchange of information (Stokes and Bergin, 2006). This research strategy will provide the author with flexibility in terms of organising diaries with each participant.

The challenges presented by the adoption of the proposed strategy are many. For instance, management of the interviewees' diaries and their availability will require flexibility on the author's part. Importantly, one must always be conscious of the danger of bias encroaching into the process and avoidance strategies adopted.

The questions posed during the interview will primarily cover the areas of the literature review and the different types of binding arbitration in the areas discussed. Due to the limitation of the available relevant literature, the participants will be asked of their experience in dealing with these different types. The flexibility of the proposed structure will facilitate the review of other areas that might highlight additional relevant aspects of Irish binding arbitration.

Therefore interviewee selection has been chosen based on the participant's involvement in the HRA and their perspective of it. This is expected to provide a balanced overall perspective of the process.

As stated earlier in the paper this will be a qualitative research, consisting of six in-depth interviews with employment stakeholders such as a; senior member of the LRC, senior trade union officials, managers within the HSE

and Department of Education, and a trade union branch official. The author has direct contact with some of the people involved – these will act as ‘gatekeepers enabling access to others and will make the introduction to the other parties not known to the author.

Each of the six participants in the interview was fully briefed on the format of the interview and asked if they were happy for the recordings of the interview to be made. In addition each participant was asked if they found it acceptable to be named in the research. All participants agreed to be recorded and named within the research. The interviews were recorded using a Sony Digital Dictation machine model number ICD-PX240. The interviews were then transferred to a hard drive as back up. For the purpose of the paper each participant is named below and their role and will be referred to as participant 1, 2, 3, 4, 5 and 6 for the remainder of the paper.

Participant 1 – Kieran Mulvey - Chief Executive of the Labour Relations Commission.

Participant 2 – Peter Brazel - Civil Servant Department of Public Enterprise and Reform.

Participant 3 – Philip Crosby - Principal Officer in charge of External Staff Relations in the Department of Education and Skills.

Participant 4 – Shay Cody – Impact General Secretary.

Participant 5 – Liam Doran – Irish Nurses Midwives Organisation (INMO) General Secretary.

Participant 6 – Tom Fitzgerald – Unite Trade Union Official.

The participants will be told in advance that the interviews will be recorded. The author will produce a theme sheet to follow in each interview. This will ensure that each specific area is covered with each participant. The questions

will be open ended to allow the interviews to evolve into free flowing discussions. The research questions will be sent to the participants in advance to allow a greater time in the interview to be dedicated to obtaining the answers and an overview of the Peer Review and Anheuser-Busch process to allow for further discussion in interviews.

### **3.6 Ethical Considerations**

As this research involved human participants, there will be ethical issues involved concerning confidentiality and privacy. In order to adhere to the National College of Ireland, Ethical Guidelines and Procedures for Research involving Human Participants, prior to commencing this research, approval will be sought to commence the research. The interviews will be recorded to allow review after which for ethical purposes they will be stored by the author on a secure hard drive at his home address. Post marking of the dissertation the interview recordings will be destroyed.

### **3.7 Conclusion**

The research methodology to this dissertation was found by the author to be very rewarding. The approach of semi-structured interviews allowed freer flowing interview that the author felt made the participants more relaxed. The author also gathered some excellent data from the recorded interviews to take to his research analysis stage.

## Chapter 4. Analysis and findings of the qualitative data

### **4.0 Introduction**

In this section the author will set out the research findings while drawing some conclusions and in addition outline the experience of the participants in the HRA and their role in the agreement. This chapter will also analyse the questions (appendix 1) asked and draw out a four common themes across them. The answers will not be attributed to individual participants except for direct quotes if used. The literature review has highlighted some alternative processes which will be discussed with the participants and their answers have given different perspective to the author to what he thought he had discovered. The author will use content analysis approach in that the paper will state if there were any common themes within the answers from the different participant.

### **4.1 Participants**

**Participant 1** is a well respected and experienced Industrial Relations professional within the industrial relations mechanism of Ireland and the person appointed by the government to draft the Croke Park and HRA.

**Participant 2** is a senior management figure within the civil service department with years of industrial relations experience within the civil service who was appointed by the government to represent them in drafting the HRA.

**Participant 3** a senior management figure within the Department of Education and also a union representative prior to his management position, Provides a balance of perspectives from two sides of the negotiating platform. Therefore like the author his perspective from both sides was very important. He was involved in drafting the HRA.

**Participant 4** the Head of one of the unions representing the staff in public service drafting the HRA.

**Participant 5** the Head of one of the unions representing the nurses and midwives in drafting the HRA.

**Participant 6** a trade union representative representing a smaller union involved in drafting the HRA, which they opposed the thrust of the agreement. This participant also had experience at representing people at local level so his contribution was important.

## **4.2 Interview Questions**

The following findings are based on information given to the author during the semi-structured interview conducted with the six participants. Common themes across each question will be identified and explored. These four common themes will be analysed. Will the shift of 'voluntarism' to one of 'compulsion' on the part of the signatories prove effective in achieving the agreement's aims? Let us remind ourselves of the primary question asked in the research.

***'Will moving from a voluntarism system to a binding system work and will it deliver mechanisms that will resolve issues at local level?'***

### **4.2.1 Theme 1 - Reasons behind the HRA**

The interview opened by asking each participant what they felt the reasons were for the HRA, this approach helped frame the interview to bring it back to the beginning and to expose any common theme.

The findings are that the participants all brought the author back to the collapse of Croke Park 2 and there was no surprise from that the CPA 2 did collapse and all of them were of the same opinion in that; it was viewed as a top down approach. According to the records The Croke Park agreement (CPA) was intended to last until the end of 2013. All the participants stressed the importance of framing the reason for the HRA and the context by which they entered into the discussions.

It was felt by all the participants that the main driving force behind the CPA was the very deep sense of emergency felt at the time. The country's finances were spinning out of control to a degree that it was felt would lead to the EU/IMF bailout later in 2010. Participant 4, 5 and 6 all trade union participants in the study felt the government had imposed two major cuts on public servants – the pension related deduction in March 2009 and the pay cut (of 5% and upwards) on 1 January 2010. Participant 5 highlighted that there was almost a complete embargo on staff appointments, and there was a palpable sense of an immediate risk of redundancies (hitherto unthinkable in a public service context). Participant 1 said there were significant unions and worker unease and industrial unrest were prevalent around the public sector, which led to the dispute later in the passport office, which we will discuss. In late Nov/early Dec 2009 the government and unions met in Government Buildings in an effort to come up with some agreed pay savings mechanism, but this effort failed – leading almost immediately to the pay cuts on 1/1/2010, by forcing through legislation to impose levies on the public sector. The level of industrial unrest increased in the following weeks, with a particularly well-known and public dispute happening in the Passport Office, when there was a go slow by the workforce in the passport office to process applications. Although this was a show of strength of the union the union participants in this study reflected on the fact they realised they didn't have any public support. Following this dispute the two sides got together at Croke Park in another effort to reach agreement. That agreement was the CPA, and included a dispute resolution procedure with defined time limits and a binding arbitration at the end of the process.

Participant 1 "But due to the weakening exchequer finance there was a need for the government to return to the well to secure more savings." So the government had to return to the CPA to stretch an already stretched position with the trade unions in order to secure more savings.

So the pressure on the public finances along with the IMF, drove the need for the Croke Park agreement to be revisited. There is a theme throughout that all parties signed up to the collective agreement voluntarily. All participants



referred to the FEMPI (Financial Emergency Measure in the Public Interest Bill 2013) legislation. Participants 4, 5 and 6 believed this took away any power they had to negotiate and the government could just enact the legislation. They stated this was the reason they entered to negotiate from within the agreement. This legislation allowed the government to reduce public sector pay on salaries over €65,000, which was broken down as follows;

- On salaries up to €80k took a 5% cut
- On salaries up to €150k took a 8% cut
- On salaries up to €185k took a 9% cut
- On salaries over €185k took a 10% cut

Therefore again the trade union participants felt always held in the background was the threat this would be implemented without agreement. The management representatives felt on one hand this strengthened their hand in the negotiations, however participant 2 recalls very difficult conversations he had to have with public servants who's partner had lost their jobs. Participant 2 talked about the human impact this had on his negotiations, always at the back of his mind.

The analysis revealed that the shift from voluntarism to binding started at the beginning of the discussions around the HRA, whereby both parties knew they had to get an agreement otherwise legislation would be implemented. We can draw a comparison to the fact we now have binding arbitration so another party can make the decision and you have to accept. So this shows when there is the threat that another party will decide it forced both parties to find a compromise, which was the HRA. The common theme is that the financial state of the country, demands from the IMF and FEMPI legislation was all reasons for entering in the HRA, but to influence it from inside a collective agreement. This analysis supports literature review from the author Bennett who describes a process that he believes in instead of imposing binding arbitration it is better to get collective agreement. Looking at the starting point of the HRA is consistent with Bennetts view and supports his theory in that the parties entered a collective agreement without the FEMPI enacted into

practise. Participant 5 was of the strong opinion that you should always keep the law out of negotiations and this is why they agreed the HRA.

In addition to the financial position of Ireland was the trade union participants felt, they were on the horns of a dilemma. On one hand they felt the need to be centrally involved in the agreement however they knew there was reluctance by their members to give them a mandate to enter talks. Participant 4, said the employer asked for them to save a billion euro, he felt that it was important that they were able influence the agreement because in 2009 and 2010, the government just legislated to make savings. They were giving up their power to influence by remaining aloof from the talks. They simply had no choice. The invitation from the government to the unions was seen by participant 4 as both a difficulty and an opportunity. Participant 4 believed that experienced practitioners will be aware and that if they do not get agreement someone else will arbitrate and that the end solution will focus their mind to get agreement at local level, from both Management and Unions. Participant 2 said that the minister was giving a very clear direction that this was to be done by a collective agreement; yet again it suggests the government also wanted to find agreement at the meeting rather than have someone arbitrate. This is further evidence to support the study.

Participant 5 “It was a gun to our head either you are going to do it this way or we will implement legislation.”

Participant 5 added that the HRA was more complete than Croke Park 2, because it was felt the latter failed to accommodate the complexities of the shift worker and in particular females in relation to part-time workers. He felt strongly about this point and he believed his union’s stance saved the overtime rates for Saturday and Sunday working.

In relation to the topic and the principal of moving to binding arbitration, participant 5 felt his union would have favoured a more “voluntarist” dispute resolution mechanism if it thought it could have withstood the pressure to concede on those issues. But the sheer scale and extent of the country’s

crisis at the time made the unions believe they might not, therefore leading them to the conclusion that a binding mechanism overseen by the independent Labour Court offered them more protection. He felt they had to take a pragmatic view and that taking an aggressive approach would not help anyone, he also made the point that they don't need to talk to them again they simply amend legislation but being public about it in his view is a political stunt. He also made the point that the government failed to remove all allowances set out under CPA and this is why they had to come back for further talks.

This paper is trying to prove was an interesting point that was found in the interview with participant 3, he clearly expressed a note of caution that people like to abdicate responsibility. He raised an important point that both parties might like the decision to go to binding arbitration because it allows them to step back and save political face with their members. As mentioned this is an interesting point and would that would contradict the object of this study.

There was another area raised by participant 5 in that was it just a political imperative to do something, to show the IMF and the citizens of the country that the government was doing something to address the public service pay. Participant 5 was also of a similar opinion and believed that the HRA was a consultation rather than negotiation, as it was stated by the government that 1 billion had to be saved and how would they do that. This could form an interesting research topic for a future study, in what actual savings were delivered by the HRA.

#### **4.2.2 Theme 2 - International Labour Office**

The ILO set standards on arbitration and the preferred approach is a mediation approach. The ILO however does see a need for binding arbitration if the services provided by the bodies involved in the dispute are essential for society. Although a narrower area to discuss with the participants the author felt it was important to understand their views of an international body suggesting binding have its own pitfalls.

The general feeling amongst the participant was that there exists already mediation arbitration in place with the Labour Relations Commission, so why is there a need to reinvent the wheel. Also what has been put in place over the last 2 years has been the Workplace Mediation Services (WMS), it is of the opinion of participant 1 that this is getting some traction in particular if the issues in dispute are not related to pay. There are two forms of issues addressed by state institutions; issues of rights (contract) and issues of interest (industrial relations), the WMS is more effective when dealing with the latter. This can be contrasted to the literature review of the Peer review process in place where there are no unions. The research shows that the WMS is very similar to the Peer review process; in that two parties within the workforce present their case to an independent body. Participant 1 also made the point that he disagrees with what the theory states. He believes the mediator should also arbitrate because they understand the case having been dealing with all the issues why should there be a need to go to another arbitrator to hear the case all over again, it is how he has practiced. Participant 5 believes that mediation services are already in place in the health service because there are oversight bodies in place for the HRA. He believes in fairness this element introduced to the health service has worked, when there has been a dispute about rosters and recruitment of permanent appointments. So this point supports the ILO literature review off have mediation service before binding.

Participant 3 was of the opinion that mediation arbitration serves a purpose in narrowing the dispute down to the contentious issues, meaning agree the ones that are acceptable to both parties. Then the remaining item/items can then be referred to the arbitrator, this supports the literature review carried out in relation to the ILO view on mediation arbitration.

A common theme with all the participants was the support for the ILO literature review in terms of binding arbitration for essential services, but yet there is no written agreement in place. All the participants felt that essential services are always maintained and politically not providing the service would be damaging in the eyes of the public because our country is so small. The view expressed

by the majority was that it seemed more a moral requirement, although they were concerned as to how the term essential service could be defined; this concern was grounded in the argument that a case could be made for them all. As a direct consequence the trade union participants disagreed with having a definitive list. Participant 5 who represents the essential services in hospitals makes the point the need to have clear fundamentals laid down around this point.

A central concern was raised on the definition of the term “essential” services and precisely how the type of services might be defined. The majority of the participants could see, however, that where the trade unions, employers and government can reach a common understanding that a service is “essential”, a binding arbitration system could provide a balanced outcome satisfying the expectations of the two sides. But in a situation where employers, unions or government dissent from a view about whether or not a service is “essential”, respondents felt dissenting parties could reasonably be bound by a system of arbitration. Participant 3 felt the government would have to legislate for this, but that is very much a case of government exercising power/authority over employers and unions. Even in a public service sphere, that kind of power relationship in the IR sphere might not be appropriate in the context of a liberalised market economy.

Participant 1 “I am of the opinion that we will never have a scenario again where we will see all out strikes in essential services, and whatever about a political mood not to have a strike, the public would not tolerate it.” He went on to say are robust resolution bodies within Ireland, LRC and the Labour Court that will find solutions to the disputes. He also believes is everything actually arbitral, when he comes to certain issues relating to pay and pension.

#### **4.2.3 Theme 3 – Alternatives**

At the outset of the interview each participant was briefed on the alternative means of arbitration that we researched in the literature review. Firstly Bennetts view on non-binding arbitration was outlined with particular

emphasis was placed on the implementation potential if done correctly there is no requirement for bind arbitration.

The participants all had the same understanding of Bennetts view in that we already have non-binding arbitration in their own experience of using the Labour Court under the Industrial Relations (IR) Acts, where the legal position is that decisions of the Court are non-binding recommendations rather than binding determinations.

In that sense, the participants had the general view that Ireland already has a long-standing practice of making extensive use of non-binding arbitration because of the role played by the Labour Court in IR disputes in the Education and Public sectors. Moreover, for the most part the Department of Education sector employers would by and large implement recommendations of the Court, and generally speaking the experience of both the union and management has been that both union sides have tended to accept the recommendations of the Court as well.

Participant 3 also supports the research by confirming non-binding arbitration is one key area of particularly teaching employment, and it has proved to be effective. Under the HRA teachers start their careers with fixed term and part time contracts, and build up an entitlement to permanent and full time work over a period of years (it was four years, then fell to three under the HRA, and with effect from September 2015 is reducing to two). The Department of Education governing this process demonstrate that where a teacher disputes that a school has not implemented the rules properly, they can refer the issue to the system's Fixed Term Adjudicator (a Senior Counsel with experience in employment law). The Adjudicator will decide on the matter and issue a non-binding decision – but in practice decisions are almost always accepted by both sides. This system has been in place since 2005, and currently decides on around 40 disputes annually. The school and the teacher (or union) are responsible for their own admin costs in connection with the adjudication system, and the Department pays for the cost of the Adjudicator.

However, for reasons already mentioned under your Theme 1, binding arbitration was found by both sides to be preferable to non-binding arbitration for the purposes of the Croke Park and Haddington Road Agreements. The opinion of participant 3 is there is a sense – to some degree – on the management/government side that there is more “moral” pressure on the government to implement non-binding decisions of the Labour Court when they favour unions, but not so much pressure on unions to implement non-binding decisions that go the way of the employer side. This was an interesting development within the research but not an opinion expressed by the other participants.

Some of the participants expressed disbelief that there is a role for non-binding arbitration within the HRA. Participant 1 commented that it is a contradiction of terms. A considerable amount of non-binding arbitration has been conducted during his tenure within the LRC according to participant 1. Notwithstanding the fact that ambiguity remains as to its binding nature, there remains some ambiguity as to its status. Participant 2 brings another perspective to the research in that all arbitration within the industrial relations mechanism is non-binding because only the legal court of Ireland can issue binding decisions in the true sense of the meaning. This becomes a common theme within the research as they are all of the opinion that arbitration is accepted by practitioners more from a morale viewpoint. Participant 4 was of the view that having people accept a non-binding arbitration decision is a much better place to be in terms of a trade union perspective. To explain this perspective a trade union finds it easier to implement decisions if their members agreed or voted in favour of the outcome rather than have a decision forced on them.

All participants were of the opinion the Labour Relations Commission continues to play a centrally influential role in bringing all three of Ireland’s “crisis” agreements to successful conclusions; that is particularly true of the Haddington Road Agreement. In doing so, LRC people brought a variety of styles and a flexible combination of approaches to the table according to participant 1. Participant 1, 4 and 5 said the style adopted by a mediator

should be whatever style is most likely to bring the parties in the mediation to a successful outcome that both can live with. Mediations should be about the parties, not the mediator. Of course if the mediator can deploy some tactics or force of personality in the process and secure a result that could prove effective. But the key to doing that successfully is to have even-handedness and integrity so as to maintain trust with the parties. It was a general theme across all participants that, these are all things that the LRC did and has proven effective in the implementation of its role. The general view of all participants is that the LRC have been able to persuade and force people to make decisions depending on the circumstances.

The general agreement of the participants was that the American model of more aggressive behaviour by the arbitrators wouldn't work in Ireland because it isn't our culture to accept this type of behaviour. It is generally believed among the participants that industrial relations as a whole is conducted more aggressively in the US and this it is believed has the inevitable consequences for the chosen behavioural style. Also according to participant 1 the unions in the US place significant emphasis on lobbying. As a result all have their main offices within Washington, where they are more akin to corporate entities which may at times have a vested interest in prolonging disputes.

When I discussed the alternative method of Peer review with the participants there was general agreement that the concept would encounter fundamental obstacles in the Irish system. While they weren't particularly familiar with the intricacies of the process, participant 4 and 5 were strongly of the opinion that the labour court do a very good job in solving all disputes. A union might win one dispute but then lose another, so this was a strong reason they had for believing in what they currently have is better than a Peer review process. The theme amongst the participants is that it would be problematic in the Irish public sector context for a number of connected reasons. Firstly, the players on the management/employer side tend to have very similar cultural outlooks even across sectors; when we speak to IR practitioner counterparts in health or local government, their take on issues doesn't seem to vary very much from



colleagues in IR in the education sector. Secondly, not only is this true on the union side, but in the case of the big public sector unions (SIPTU and IMPACT), the same people are active across sectors. For example, some of the officials deal with in the education sector and are also active in the health and (particularly) local government areas. Thirdly, and this is probably related to the previous points, Ireland is a small place, which means that finding peer review that is genuinely independent is not an easy thing to do.

When the author introduced the Anheuser-Busch model that was discussed in the literature review, none of the participants were in favour of the model. Indeed none were with the method. When it was explained all expressed the view that it would encounter significant difficulties in its application. There was a negative reaction to it was the general theme. For example participant 3 was particularly emotive and expressed almost visceral negative reaction to the idea and a very “American” and very “capitalist” in its outlook. Part of this may have been down to his sense (which many of his colleagues on the management side would share) that Ireland’s conciliation and arbitration processes should be fair, equitable and accessible. Some of it may also be attributable to his background; before he was ever on the management/employer side he spent 25 years as a trade union activist, and was national president of two civil service unions.

#### **4.2.4 Theme 4 – Where are we now with the Haddington Road Agreement**

Four of the six participants believe to a large degree that the HRA has been a success, in particular the oversight groups, some management may have got away with further change but the oversight groups brought them back in line with the agreement. The other two have mixed views but this is mainly due to the fact they still have reservations about the whole agreement and they still can substantiate the value achieved, these two participants are from the union side. They feel they gave up too much and for the author it was difficult to shift them off this viewpoint. In some cases the agreements (HRA and CPA) have succeeded, but in others they haven’t. They feel that the critical success factors have been the focus of the local employer and their willingness to engage with the Department in driving change. In other words,

where an employer or group of employers had a clear vision of what they were looking to do and a willingness to put in the effort to get it done, and where they got their Department involved at an early stage to provide strategic support and assistance, they were more likely to promote their change agenda; if some of those elements were missing they were less likely to succeed.

The participants generally found the agreements useful in moderating the unrealistic expectations of either or both sides – employers or unions. So if a union wanted something unrealistic, they found that running the procedures of the CPA or HRA generally had the effect of nullifying the unrealistic thing they were trying to do, or else encouraged them to take a more logical/realistic view of the issue and abandon some of their more “off-beam” efforts. Likewise, when unions occasionally encountered employers with an overly gung-ho view of an issue, they found that the CPA/HRA procedures tended to introduce a more realistic or disciplined view.

Participant 1 is of the view that sector wide claims have been addressed. He also felt that the development of the HRA is to strengthen the oversight groups as he felt this was an area that needed to be addressed. It wasn't that the oversight group was weak but that it was structured effectively.

When the author discussed the issue of whether the HRA struck a balance between management and unions, the general view is that it had. They thought for the most part that the CPA/HRA has struck a balance, and equally importantly has been a key instrument in managing the collapse of the economy. They all made some reference to where pay rates and public spending have gone since the 1960s, the period from 2008 to now sticks out like a sore thumb – the last few years represent a very significant backward step in the lifestyle, living standards and future expectations of Irish people and workers generally, and of public servants in particular. From a societal perspective, managing that backward step while maintaining some sense of social order and cohesion has not been easy, participant 3 and the Department of Education have achieved that, and the CPA/HRA have played

a central role in that process. This has been done without major industrial action and disruption to services, without a “swing to the right” in terms of a diminution of employee contractual terms, conditions and rights, and while focusing the harshest pay cuts (in relative terms) on the highest paid rather than the lowest paid. The theme running through all the participants is that there were no compulsory redundancies, maintained industrial peace and these points are seen as very important point by them all. All participants were of the view that this has been quite a remarkable balancing act.

But the question was asked as to the future of the HRA and particularly relating to the Lansdowne Road Agreement (LRA), which is agreed by the trade unions at the point that this dissertation is being written. The theme between the participants is that there new agreement reflects the change in Ireland’s economic situation since 2012/13. In the future, trends remain unaltered then future agreements will be more generous, but if things worsen they will not. It was felt as another common theme that if anything the LRA has softened the government’s stance on public service reform and change (in terms of things like outsourcing and privatisation, for example). They also don’t see governments suddenly changing tack in the next few years unless there is another deep crisis, there was also the belief that the LRA was an electioneering stunt to win votes. Participant 4 said again like the original CPA there was no discussion it was this is the amount of money how will we give it away.

Each of the interviews concluded by asking the participants being asked a question of this research had the HRA which moved industrial relations in Ireland from a voluntarism system to a binding system work and did it deliver mechanisms that will resolve issues at local level? In volume terms the participants agree most of the referrals to binding arbitration have been driven by two related issues. One is the redundancy/job security provision – whether or not employers in the education and public sector, especially universities, are entitled to make certain categories of employee redundant. The other is the rate of redundancy settlement to be paid when they are made redundant. As it happens, many of the education sector’s principal successes did not

stem from binding arbitration, but rather from the conciliation stage where both sides decided to reach agreement to avoid a referral to binding arbitration. Participant 3 referred in particular to the additional hours worked by teachers and lecturers, the introduction of more effective/flexible redeployment systems in schools and more effective redeployment of non-core staff (e.g. childcare workers) in Education and Training Boards.

All of the participants were firmly of the view that the HRA had put mechanisms in place to resolve issues at local level but they were unable to substantiate this common theme.

### **4.3 Findings**

The author has analysed the interviews across four themes;

- Reasons behind the HRA
- International Labour Office
- Alternatives
- Where are we now with the Haddington Road Agreement

All the participants believed that the HRA favoured the management more than the unions. They also believed that it put an end date on disputes, which could no longer role on for years and years so the HRA had put an element of control on disputes and that this was a positive outcome.

The participants were unable to substantiate yet they all stated that more issues of conflict are being pushed down to local level rather than being dealt with centrally. The author has analysed the interviews and found that there is not an actual figure for the amount issues/disputes that have been resolved at local level because binding arbitration will make that decision for them. However there is a common theme throughout all the interviews that it has been successful in delivering mechanisms to resolve issues at local level.

All the participants were also of the opinion that the LRC already effectively fulfils the role of facilitating mediation of conflict. Participants were unsupportive of the proposed methods suggested as alternatives, as they

believed they didn't suit the culture of Ireland. The findings from the interview tend to support the method set down by the author Bennett in the literature review in that he supports mediation arbitration.

It was interesting finding from the interviews is that the FEMPHI legislation played a key role in the HRA, in that it focussed the trade unions on getting an agreement before it was implemented. This can be related to the question of this paper, did the fact that the government were going to implement a binding decision in terms of a pay cut or were the unions going to make an agreement before it was enacted? The answer to that is yes and the unions made an agreement at the local level rather than have the government implement the legislation.

All the participants were constantly commenting that although the groups entered a binding arbitration process in agreeing to the HRA, they stressed they did this voluntarily. They also stressed that still it remains a gentleman's agreement in Ireland that people agree to implement binding decisions and it is only a court of law that only enforce them.

## Chapter 5. Conclusion and Recommendations

### **5.0 Introduction**

This chapter will draw a set of conclusions emerging from the research and its analysis. Some recommendations for further study will also be made.

### **5.1 Conclusion**

Throughout the process of completing this dissertation the author's aim has been to prove the central question as to whether moving from voluntarism system to a binding system will lead to effective mechanisms at local level, which will resolve conflictual issues. The topic was originally selected primarily because of the authors is background of trade union representative and more recent senior management experience.

The author started the investigatory research process by meeting senior industrial relations figures within Ireland to decide on the topic. Once the topic was had been decided upon the search for literature for review was begun. The literature review presented significant challenges as the topic for research was new, the NCI recommended literature based on the advice of Dr Bill Roche of UCD. Dr Bill Roche also recommended that the author use the ILO as standard guidance. Of particular interest to the author was the alternative means of compliance, the author also thought that these had some merit in the context of the research question. The review of the literature also showed that other authors believed that there is no need to implement binding arbitration but in contrast set up non-binding correctly and that will give the same results.

There were no quantifiable findings that showed there has been an increase in solving issues at local level. However all the participants in the different interviews demonstrated belief that the HRA has been a success in resolving issues at local level, rather than having a designated person arbitrating on the dispute further down the road. It can be concluded from the research that moving from a voluntarism system to binding has delivered an effective mechanism that key participants acknowledge will resolve conflictual issues at local level.

This dissertation has been successful in completing the research and answering the question but the research failed in being able to quantify those findings. The dissertation was also able to bring to the interviews alternative means of compliance as reviewed in other countries. This idealism from the trade unions supports the question in the study because it is showing that putting in place a mechanism to resolve the issue rather than the government arbitrarily drafting legislations is what was wanted and worked.

#### Theme 1 - Reasons behind the HRA

There was a clear view of all the participants that the reason was the economic downturn and the demands of Europe and the IMF. This paper can conclude that there would be no HRA if there was no recession.

#### Theme 2 - International Labour Office

The ILO favoured non-binding arbitration and it was the view of the participants that this is how Ireland already operates in terms of the LRC. This paper can conclude that Ireland operates to the guidelines of the ILO.

#### Theme 3 – Alternatives

The common theme among the participants was that the alternatives suggested will not suit the Irish culture they were of the view what is in place is as good if not better. The study can conclude that there is no scope to trial any of these methods and the participants within the industrial relations process would not be in favour. The implications for this research are for a HRM strategy for companies who don't have trade union recognition agreements and this may serve a purpose as an alternative.

#### Theme 4 – Where are we now with the Haddington Road Agreement?

The common theme is that it has been implemented successfully and that any difficulties with the agreement have been addressed at local level and in the LRA. It was also the conclusion of all participants that agreements are getting resolved at local level rather than centrally. The paper can conclude it has been a success and further amendments will resolve outstanding issues.

## **5.2 Recommendations**

A number of strands with potential for further research have been identified during the course of the project. For instance it would be interesting to explore as to what actual savings were saved by the HRA. In addition the fact that the government have the FEMPHI legislation already approved to what extent does the legislation impact on the collectivisation of the public sector workers and the consequential impact on the position of the Trade Union movement within the sector. From a theoretical point of view it would be interesting to test the extent to which the new mechanism has affected the central principal of 'voluntarism' within the Irish industrial relations system. Another key research field will inevitably evolve.



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## Appendices

### **Appendix 1 the Semi-Structured Interview Questions**

R.Tatten Dissertation - The Haddington Road Agreement.

The HRA: 1. Will the shift from the 'voluntarist' principle to one of compulsion on the part of the signatories prove effective in achieving the agreement's aims. 2. What are the implications arising for the system of collective bargaining and the relationship between the actors at a local bargaining level.

Topic 1 – Reason for the HRA

1. What do you feel were the main drivers behind the development of the HRA?
2. From a trade union perspective what do you feel were the main drivers? How important do you feel the fundamental system shift away from the principle of voluntarism was considered?
3. From a Government perspective what do you feel were the main drivers? How important do you feel the fundamental system shift away from the principle of voluntarism was considered?
4. Compulsory arbitration has benefits and downsides. What do you feel are the benefits and (possible) downsides to compulsory arbitration?

Topic 2 – International Labour Office

1. Mediation arbitration is a method proposed by the ILO prior to the final stage of binding arbitration, what is your understanding and views on mediation arbitration and do you see it as a role that could be played in the HRA?
2. The ILO also recognises the need to have a binding system of arbitration when services provided are essential for society. Do you agree with this statement and could you explain why?

Topic 3 – Alternatives

1. The author Bennett believes that if non-binding arbitration is implemented properly it can serve useful purposes what is your their understanding of the term – Non-binding arbitration. Do you see it playing a role in the HRA and why?
2. Bennetts review of non-binding is based on the US model and the research shows that the arbitrators in the US are more aggressive in their approach to the parties to force an agreed settlement. What do you feel as the optimum style and the reasons for it?
3. While carrying out my research for my dissertation I came across the Peer review process where their peers arbitrate, when presented with the case history. This may sound a bit strange and open for abuse but he ILO also recognises the need to have a

binding system of arbitration when services provided are essential for society. This is a possible alternative to the previous approaches. What is your understanding of this method and what are your views in First off, and understanding of it and the views as to the implications of the approach, etc.it appropriateness, its implications on the relationships

4. Another alternative is the Anheuser-Busch that has three levels, Level one – Local Management Review. An employee raises a form that includes the dispute and this is then reviewed by the local Human Resources representative for a decision. Level two – Non-binding Mediation. An employee pays a fee of \$50 to have their dispute heard. This stage involves a mediator in the dispute. The mediator is experienced and selected by the employee and the company. Written summaries from both parties are submitted to support the claim. The mediation is quite private. Level three – Binding Arbitration. An employee pays a fee of \$125 to have their claim heard. The decision is final and binding on both parties. What are your thoughts on this type of process and would you think it would work in the context of Ireland and if so why?

#### Topic 4 – Where are we now with the Haddington Road

1. Has the agreement been successful in delivering mechanisms to resolve issues at local level and what are your reasons for your conclusion?
2. Has the HRA achieved a balance between the contrasting positions and expectations of the different parties to the agreement. Do you feel the HRA is in favour of trade unions?
3. How many local issues have been referred to the binding arbitration process?
4. My research is probably timely as the unions have tabled the next round of talks, what do you think will happen and what do you feel is the future of the HRA?
5. Referring to the ability and robustness of the HRA what will happen do you think in the next recession because it will come around in the cycle do you see a cut to public sector pay or will we not learn from our history, taking into account the structure to manage future challenges?