

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON OFFICE**

**BETWEEN** NZ Post Primary Teachers' Association on behalf of Ray Russell and  
6 members (Applicant)

**AND** Ministry of Education (Respondent)

**REPRESENTATIVES** Andrew Gane for Ministry of Education  
Nicole Carter for NZPPTA

**MEMBER OF AUTHORITY** Susan Bathgate

**SUBMISSIONS** 11 and 24 July 2001

**DATE OF DETERMINATION** 30 July 2001

DETERMINATION OF THE AUTHORITY

**The problem**

This is an application by the Ministry to reopen the investigation into the application initially filed by the NZPPTA seeking a determination about the meaning of a clause in the Secondary Teachers' Collective Employment Contract. The determination (WA 32/01) held that clauses 3.9.5(b) and (c) confer on teachers who suffer a reduction in status of their position as the result of falling school rolls entitlements to appointment to their teaching position at its reduced status, the salary they received prior to the reduction for one year from the date of reduction and any increments to that salary which occur within that year. Paragraph 10 of the determination states: *Clearly, when the year has passed the affected employees revert to the salary of the new reduced position.* The Ministry wants clarification of that sentence of the determination: what happens to the new salary when the period of protection ends?

The NZPPTA opposes the reopening of the investigation for the reason that the answer to that question is very clear: at the end of the year of protection the salary simply reverts to the maximum entitlement currently payable to the affected teacher.

**Findings**

I am required to determine what salary entitlement a teacher should receive following the one year period in which the teacher received salary protection pursuant to clauses 3.9.5 (b) & (c).

The Ministry takes the view that any increments to the salary of the new reduced position would not be payable if there were also increments to the protected salary because this would result in a double benefit to the teacher – cash on top of the protected salary, as well as an increase in the new salary when the protected period ends.

The NZPPTA takes the view that at the end of the year of salary protection the teacher loses the salary protection but retains any increments they were due. Their salary simply reverts to the maximum payable:

The salary protection merely enables the status quo to be preserved. It enables teachers to rearrange their financial affairs in accordance with the reduced salary. It does not prevent teachers receiving any other salary increments that they become entitled to. In this case the teachers were entitled to increases to both their salary and unit rate.

I accept that submission.

This means that during any period of salary protection a teacher is entitled to any increments to the protected salary and at the end of the period of salary protection is entitled to any increments to the reduced salary which occurred during the period of salary protection.

It is clear that I have reopened the investigation with this conclusion. In the previous determination I reserved the issue of remedies. The Ministry sought to reopen the investigation so that it could be assisted to resolve the issue of remedies directly with the PPTA. It is my hope that the parties can now resolve this issue of remedies themselves. If not it should be clear that I will reopen the investigation again to do so.

Susan Bathgate  
Member of Employment Relations Authority