

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2014] NZERA Auckland 330  
5370073

BETWEEN

LESLEY HUGHES  
Applicant

A N D

BOARD OF TRUSTEES OF  
ROTORUA GIRLS HIGH  
SCHOOL  
Respondent

Member of Authority: G J Wood

Representatives: Paul Morten for the Applicant  
Gretchen Stone for the Respondent

Investigation Meeting: 3 and 4 April 2014 at Rotorua

Submissions Received: By 14 July 2014

Date of Determination: 8 August 2014

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The applicant, Mrs Lesley Hughes, former head of the art department with the respondent (Rotorua Girls High School), although subsequently re-engaged as an art teacher, claims that she was unjustifiably disadvantaged and dismissed during the redundancy process that led to her being given notice on 24 November 2011. She also claims that she was not paid \$600 for a scholarship she had been granted in that year. The Board denies all of Mrs Hughes' claims.

[2] The issues for determination are:

- Was Mrs Hughes properly selected for redundancy?
- Was Mrs Hughes properly consulted during the redundancy process?

- If not, what remedies should be awarded to Mrs Hughes?
- Is Mrs Hughes entitled to payment of the scholarship?

[3] Mrs Hughes is a long standing member of the staff of Rotorua Girls High School, commencing work there in 1995. In 1997 she became head of the art department. During almost all of this period Mrs Annette Joyce was the Principal of the school. Unfortunately, for reasons that still remain unclear, Mrs Joyce and Mrs Hughes did not get on well. In fact Mrs Hughes claims that at one point several years ago Mrs Joyce threatened to have her management units and her job. There is insufficient evidence to sustain such a stale accusation and I dismiss it accordingly, although it is clear that Mrs Hughes was not regarded fondly by Mrs Joyce and vice versa.

[4] One major issue between Mrs Hughes and Mrs Joyce related to a request made by Mrs Joyce in or around 2009 for Mrs Hughes to take on the teaching of a photography class. Mrs Hughes made it clear that she did not want to take the photography class. Mrs Joyce took from that that Mrs Hughes did not want to teach photography, although Mrs Hughes' view was that her workload was too great for her to be able take the photography class. Mrs Joyce also expressed the view that Mrs Hughes could not teach photography because she was not up to date with matters such as digital photography and photo shopping.

[5] While these were Mrs Joyce's genuine views at the time, they are in fact mistaken, as can be ascertained from the fact that when Mrs Hughes was re-engaged by the Board after she had been declared redundant, she did in fact take photography without any difficulties, as she was qualified to take the subject. This error on Mrs Joyce's behalf cannot be blamed on Mrs Hughes. Rotorua Girls High School must take responsibility as a fair and reasonable employer for this error, which it never sought to clarify by direct discussion with Mrs Hughes.

[6] In 2011 Mrs Hughes was awarded a staff scholarship described as "*the sum of \$600 towards Seventeenth Biennale of Sydney*", an arts conference. Mrs Hughes spent \$1,365 of her own money to attend the Biennale and Rotorua Girls High School incurred the sum of \$1,200 for relief teachers. Mrs Hughes provided her receipts to the School secretary and expected reimbursement of the \$600, but this was never paid.

Rotorua Girls High School claim that the \$600 scholarship awarded to Mrs Hughes went towards the cost of the relief teachers.

[7] Over the course of 2010 and 2011 the School Board was informed by the Ministry of Education that it would need to reduce staff numbers because of its falling roll. It was, or should have been, clear to all staff of Rotorua Girls High School that at the end of 2011 staff reductions would be required in accordance with the surplus staffing provisions of the Secondary Teachers Collective Employment Agreement.

[8] The collective requires the parties to follow clause 3.9 appended to this determination. In essence, the matter had to be dealt with under Appendix H – Surplus Staffing Procedures. That states:

*1.1 Where a school is required to reduce staffing or alter the status of positions because of the operation of clause 3.9.1(a) of this agreement, the following procedures will apply:*

*(a) The employer shall inform employees of the number of full-time teaching equivalent (FTTE) positions to be disestablished and the number of positions to which units are allocated to be altered in status.*

*(b) The employer shall attempt to meet any reduction required by the use of attrition.*

*Attrition is the non-replacement of employees who die, retire, resign, transfer or are promoted. The employer will adopt a policy of reviewing vacancies when staff surpluses are expected to arise whereupon a partial or complete freeze will be placed on recruiting new permanent employees and/or promotions.*

*1.2 Where the reduction in staffing or alterations in status of positions cannot be fully met by attrition the following voluntary options, as defined in clause 3.9.4, will be made available to employees:*

*(a) Supernumerary employment;*

*(b) Retraining;*

*(c) Long service payment*

*provided that the employer shall not be bound to agree to any voluntary offer. The employer's decision shall be final. In the case of employees who are job sharing this clause will only apply where both employees volunteer for the options.*

*1.3 Where the staffing reductions or alterations in status cannot be fully met by using attrition and voluntary options the remaining reductions or alterations shall be made in accordance with the following:*

- (a) *A detailed analysis of the school's current curriculum and pastoral needs and of the projected needs for the following year will be carried out after consultation with employees. The completed analysis will be made available to employees and the Association.*
- (b) *The employer after consultation with a nominee of the national executive of the Association will identify the basic scale teaching positions to be disestablished in accordance with the following guidelines in the order stated:*
- (i) the curriculum balance within the school and pastoral care considerations;*
  - (ii) the tenure of the position(s) being considered; and*
  - (iii) the duration of service in the school of employees holding any positions being considered.*

**Note:** Trained beginning employees in their first year have absolute protection and their positions cannot be considered for disestablishment.

- (c) *Any teacher whose position is disestablished as a result of the operation of clause 1.3 above shall have available the following options, as defined in clause 3.9.4 of this agreement:*
- (i) Supernumerary employment;*
  - (ii) Retraining;*
  - (iii) Severance payment;*
  - (iv) Long service payment.*
- (d) *The employer after consultation with a nominee of the national executive of the Association will identify the positions to which units are allocated to be altered in status in accordance with the following guidelines in the order stated:*
- (i) the balance of the distribution of the units within the school and will take cognisance of the administrative, curricular and pastoral needs of the school;*
  - (ii) duration of service in the school of employees holding any positions being considered.*
- (e) *A teacher whose position is reduced in status shall have available the period of salary protection set out in clause 3.9.5(b).*
- (f) *A judgement of whether the teacher is competent to teach is not one of the criteria for selection and should not be a consideration for disestablishment. Matters of competence shall be dealt with in terms of clause 3.3 of this agreement.*

**1.4** *A teacher whose position is to be disestablished or reduced in status shall be:*

*(a) Notified of the change at least two months before the effective date of disestablishment or reduction; and*

*(b) In the case of employees whose position is to be disestablished, notified of the options available in clause 3.9.3 and Appendix H of this agreement; or*

*(c) In the case of employees whose position is to be reduced in status, notified of the options available in clause 3.9.5 and Appendix H of this agreement*

**1.5** *Re-establishment of positions which become available after the issuing of disestablishment notices:*

*(a) When disestablishing positions or units in accordance with clause 1.3 above the employer shall determine the record the order of disestablishment.*

*(b) If, as a consequence of roll change or staff changes following the issuing of notice(s) of disestablishment, one or more positions become available then, in the curriculum areas in which the positions have become available, the notice(s) of disestablishment shall be withdrawn in reverse order to the record of disestablishment.*

[9] What is clear from the provisions is that permanent staff have protection over fixed term and casual staff. Furthermore, attrition should be utilised first, followed by the use of voluntary options, although the employer's decision will be final over voluntary offers. Besides severance, supernumerary employment for up to thirty weeks and re-training are other options.

[10] Once the above processes have been completed the school is required to make a curriculum and pastoral needs analysis for the next year (known as a CAPNA), following consultation with employees. That analysis is then to be made available to employees and the Association. After that the Board, in consultation with a representative of the union, is to identify the positions to be disestablished depending on (in descending order) curriculum balance and pastoral care considerations, tenure of the positions and duration of service. Once a final selection for redundancies is made, those employees are then entitled to the options of supernumerary employment, re-training, severance payment and long service payment.

[11] Employees who opt for re-training continue to be paid for 40 weeks and have the rights and obligations of a supernumerary teacher, which includes the right to appointment to any permanent position in the school for which they are suitable.

[12] There is no doubt that as a result of falling rolls, seven full-time teacher positions from the school's staff were to become superfluous in 2011 for the 2012 school year. In this case, five of the seven positions that needed to be reduced were found by way of voluntary offer, meaning a CAPNA needed to be conducted to reduce two full time positions in the school. The Board was also required to reduce the number of management units by seven. The eventual loss of Mrs Hughes' position as head of art meant that her two management units went with her.

[13] Unfortunately, Mrs Hughes was away from work with a serious injury during the course of the CAPNA process. I accept that she knew that the CAPNA process was underway, but was never consulted directly, nor shown the CAPNA results that would have identified to her that her position was at risk. Rotorua Girls High School simply put the results on the school noticeboard, which Mrs Hughes, not being at school, never saw. Indeed, Mrs Hughes had been led to believe by her manager, the head of the technology faculty, that the art department was unlikely to be affected by the CAPNA process.

[14] The Board made the decision to make Mrs Hughes' position in the art department redundant on the basis that it needed a photography teacher, and following the incorrect advice from Mrs Joyce that Mrs Hughes could not teach photography. As a result the Board maintained the employment of a second year art teacher who had already given notice of her resignation at the end of term one in 2012. The Board made its decision despite verbal notice from the PPTA's specialist representative, who was present at the Board meeting, that that teacher was prepared to be considered for supernumerary employment as a voluntary option, so as to avoid Mrs Hughes' redundancy. The Board did not pursue this option on the basis that it was inconsistent with the school's needs for a photography teacher and in the absence of any written offer from that teacher.

[15] The Board also made its selection of Mrs Hughes for redundancy despite continuing the employment of 17 fixed term or casual employees, a number of whom were in the same faculty as Mrs Hughes, namely technology. In particular, there was one teacher in this category that Mrs Joyce appointed to a permanent position after

Mrs Hughes was given notice of redundancy, who the Ministry of Education refused to provide funding for the next year on the basis, presumably, that this was not a justifiable permanent appointment in a situation of a school with a falling roll. There was similar treatment of a trainee teacher in a field more closely aligned to Mrs Hughes' skills. The fact that the Ministry was not prepared to fund the first position shows that the Board most likely made the appointment in breach of the parties' collective agreement. I am satisfied that had that appointment not been made then Mrs Hughes' position would not have needed to have been made redundant.

[16] Having made the decision, Mrs Joyce and one of her deputy principals went to see Mrs Hughes to give her the bad news. I am satisfied that while they tried to do so diplomatically, the decision came as a complete shock to Mrs Hughes, and she became very upset and called her husband to assist her.

[17] Subsequently, Mrs Hughes chose the retraining option. I am satisfied that she incurred course costs of \$2,280 to attend a course that was approved by the Ministry of Education. During this period she retained her rights as if she were a supernumerary teacher. Accordingly, when what was expected did occur and the other art teacher resigned at the end of term 1, the Board was required to re-employ Mrs Hughes as an art teacher, with effect from term 2, 2012. While the position was advertised as having one management unit (Mrs Hughes had held two management units before the disestablishment of her position), this was never offered to Mrs Hughes. Mrs Hughes had to satisfy the Board that she could teach photography before she was re-employed. She did so and has taught photography without issue ever since.

[18] The parties have attended mediation and attempted to resolve the matter on their own terms, but unfortunately the issues remain unresolved. It therefore falls to the Authority to make a determination.

### **Determination**

[19] It is axiomatic that breaches of the parties' collective employment agreement by Rotorua Girls' High are sufficient to found personal grievances on the basis of unjustifiable actions/dismissal unless minor and not resulting in the employee being treated unfairly. It is difficult to see how an employer breaching the parties' collective employment agreement could be done fairly, particularly in this case.

[20] Here, the Board clearly unfairly selected Mrs Hughes for redundancy because it had been given the wrong information that Mrs Hughes was not prepared to teach photography and could not do so. The facts are entirely otherwise and in a matter relating as much to procedure as substance, Mrs Hughes was never given the opportunity to correct the Board's error made as a result of Mrs Joyce's advice. Equally importantly, had the Board followed the process in the collective there would have been no need for Mrs Hughes' redundancy, because at least one of those employees on casual and fixed term agreements referred to above should not have had their employment renewed and this would have led to Mrs Hughes' position not being disestablished. In particular, the nature of one appointment in Mrs Hughes' faculty (given that the Board understandably chose to select for redundancies faculty-by-faculty) was such that it was not an appointment able to be supported by the Ministry of Education. This shows that it was most likely an appointment made outside the collective employment agreement process. The result flowing from both of these issues is that Mrs Hughes should not have been selected for redundancy.

[21] I also accept that Mrs Hughes was not consulted as required under the collective agreement. No doubt this was an oversight due to Mrs Hughes' absence with a serious injury. However, the words in the collective agreement providing for the CAPNA to be made available to employees and the Association, and that a CAPNA is to follow after consultation with employees, must be given their clear meaning – i.e. that employees are to be consulted about whether or not their positions are to be retained. This is consistent with the requirements under the Act for consultation, including in particular s.4(1A)(c). In fact it can be said, as seen above, that had the Board properly consulted with Mrs Hughes her redundancy notice would most likely have been avoided.

[22] While the Board criticised the role of the surplus staffing specialist nominated by the union, as approving of the Board's actions and in some way endorsing them, I reject that criticism. Her role was to assist the Board but she had no decision-making power and she was not in a position to know whether staff had been properly consulted. The Board must take responsibility for its own decisions.

[23] For the same reasons as set out above none of these failings by the Board could be described as minor, because had they not occurred, Mrs Hughes would have kept her position. I therefore determine that the notice of termination of her

employment was to her disadvantage and substantively and procedurally unjustifiable. I do not consider that she was ever dismissed, however, because she remained employed during her retraining period and was re-engaged in a different position during that period.

[24] Looking at the evidence on management units in the round, I conclude on the balance of probabilities that Mrs Hughes would have lost one management unit. This is on the basis that management units had to be reduced, but also that when the art position was advertised in 2012, a management unit appeared available. I also accept on the balance of probabilities that this unit would have survived the next CAPNA round on the basis that there was turnover of other positions in the school that could have released management units, and that the Board was entitled to pay for management units on top of those funded by the Ministry.

[25] Mrs Hughes is also entitled to be paid the \$600 scholarship that she claimed from the school but was never paid. Her scholarship certificate makes it clear that she has been awarded a staff scholarship and that that scholarship is *the sum of \$600 towards 17th Biennale Sydney*. It does not say that she was awarded the sum of \$600 towards the cost of a reliever for her to attend the Biennale. She was perfectly entitled to assume that the sum was to partially offset the \$1,365 she had spent to attend the Biennale and there was no evidence she was ever told of the Board's rationale at any time before she raised the claim with the Authority. A counter-factual analysis would lead to the conclusion that Mrs Hughes was liable for the remaining \$600 in cost for relief teaching, given that her scholarship was only for \$600. The Board's response lacks common sense and is rejected.

### **Remedies**

[26] Mrs Hughes claims reinstatement to her position as Head of Art. Significantly the Board made no submissions opposing Mrs Hughes' reinstatement other than on the issue of management units, which is understandable as she has effectively remained employed by it throughout. I can therefore assume that it is reasonable and practical to do so. In any event, the evidence is clear that Mrs Hughes should never have lost her position and so therefore she is entitled (and it is practicable and reasonable) to be reinstated to that position, albeit - for the reasons given above - with one management unit only.

[27] Mrs Hughes originally claimed \$7,500 for humiliation, loss of dignity and injury to her feelings. In submissions she sought to increase that sum significantly. Mrs Hughes' evidence over the way she felt about how she had been selected for redundancy without consultation, that it was improperly done and that the notice of it came as a complete shock to her was compelling. This evidence was supported by her husband.

[28] I accept that \$7,500 is a reasonable claim to make in the circumstances and award it. While Mrs Hughes subsequently sought to increase the claim, \$7,500 was the claim sought at the time, no doubt because it was seen as reasonable, and there was no evidence that Mrs Hughes did not consider this an appropriate remedy any longer. In these circumstances it would be inappropriate to award more than that claim, which is a fair remedy in all the circumstances in any event.

[29] Management units bring a salary value of \$4,000 per unit to an employee. When taken away, that salary component continues to be paid for a year. It therefore follows that Mrs Hughes is entitled to be paid \$8,000 gross for year one (namely 2012) and \$6,000 for the 18 months that have followed. Mrs Hughes has not lost any other salary entitlements.

[30] There are no issues of contributory fault and indeed none were argued.

[31] I also accept that Mrs Hughes is entitled to reimbursement of retraining costs of \$2,280. Had she not been unjustifiably selected for redundancy, she would have not had to pay this sum. Furthermore, she remained employed and paid by the Board during her retraining period, so this is not a case where a dismissed employee is claiming for lost remuneration and retraining costs. Although it can be argued that she gained some benefit from the retraining, that benefit will also accrue to the school through her teaching. This is not an entitlement under the collective agreement but a matter for reimbursement of moneys lost by Mrs Hughes as a result of the grievance, pursuant to s.123(1)(b) – *McKendry v Jansen* [2010] ERNZ 453 applied.

### **Summary**

[32] Mrs Hughes was unjustifiably selected for redundancy. I therefore order the respondent, the Board of Trustees of Rotorua Girls' High School, to reinstate the applicant, Mrs Lesley Hughes, to her position as Head of Art, with one management unit, within 14 days of the date of this determination.

[33] I also order the respondent, the Board of Trustees of Rotorua Girls' High School, to pay to the applicant, Mrs Lesley Hughes, the following sums:

- (a) \$600 net for an unpaid scholarship;
- (b) \$7,500 net in compensation;
- (c) \$14,000 gross over the loss of management units; and
- (d) \$2,280 net in course fees.

**Costs**

[34] Costs are reserved.

**G J Wood**  
**Member of the Employment Relations Authority**

## APPENDIX

### 3.9 Surplus staffing and merger provisions

*Note: These provisions do not apply to teachers employed at the Correspondence School. The provisions applying to those teachers are contained in Part Eleven of this agreement.*

- 3.9.1 (a) Where, by reason of a reorganisation of, or a change in the attendance at, or the sale or transfer of, a school or centre, or by reason of the closure, or change of class of a school or centre an employer is required to reduce the number of teaching positions or to alter the status of positions to which units are allocated, the position(s) to be disestablished or altered in status shall be determined in accordance with the provisions set out in this part and in Appendix H. These provisions apply only to a teacher appointed as a permanent secondary teacher or a permanent manual training teacher in an approved manual training establishment.
- (b) Where, by reason of merger of a school (including, where applicable, a centre) an employer is required to reconfirm or reassign teaching positions, or to alter the status of positions to which units are allocated, or to reduce the number of teaching positions, the position(s) to be reconfirmed, reassigned, altered in status or disestablished shall be determined in accordance with the provisions set out in this part and in Appendix G. These provisions apply only to permanently appointed employees.

### 3.9.2 Notice Period

Positions identified as surplus in the procedures set out in Appendix H and Appendix G will be effectively disestablished at the start of the next school year. In the period between notice of disestablishment being given and the effective date of disestablishment, the following provisions shall apply:

- (a) Where a teacher's position is to be disestablished and where, before the effective disestablishment of that position takes effect, the roll increases sufficiently to justify its continuation at its current level, the notice of disestablishment will be withdrawn and the teacher concerned shall continue in the position at the level which existed prior to the notice of disestablishment being issued unless that teacher has, in the meantime, resigned or been appointed to another permanent position. Where there is more than one suitable teacher the provisions of clause 1.5 of Appendix H will operate.
- (b) Where, as a consequence of the closure of a school through a school reorganisation process under clause 3.9.1, a replacement school is created, positions at the replacement school shall be advertised nationally in the Education Gazette and notice of intention to advertise shall be given to the Board of the closing school. Teachers at the closing school may apply for the advertised positions. Selection shall

be on merit with no automatic right to appointment. The entitlement to the options set out in clauses 3.9.3 and 3.9.4 applies where the teacher does not secure a position in the replacement school.

- (c) Where, in the case of the merger or change of class of a school as a consequence of the operation of clause 3.9.1, a teacher applies for a permanent teaching position of equal or lower status for which s/he is suitable at the merged or reclassified school, then the provisions of clause 1.5, 1.6, 1.7 and 1.8 of Appendix G shall apply. The entitlement to the options set out in clause 3.9.3 and 3.9.4 applies where the teacher does not secure a position in the new school.
- (d) Prior to the effective date of disestablishment of a position the employer will support the teacher's finding a suitable permanent teaching position either within or outside the school and will meet the actual and reasonable costs of attending interviews at other schools where prior approval is given;
- (e) Where a teacher holds a position which is about to be disestablished and, before the effective date of disestablishment, the teacher declines an offer of suitable permanent appointment at the same salary from their employer or applies for and declines an offer of appointment to a teaching position for which the teacher is suitable from another board, the teacher's employment may be terminated from the effective date of disestablishment and no further compensation paid;
- (f) Where a teacher is appointed, under the provisions of this part, to a suitable permanent teaching position with another board and a transfer of location is involved, the teacher shall be entitled to normal removal expense provisions provided that this entitlement shall be exercised for one transfer only.

### 3.9.3 Voluntary Options

Any teacher (including a teacher holding a job sharing position) whose position as a permanently appointed secondary or manual training teacher is disestablished in accordance with Appendix G or Appendix H as a result of voluntary election or otherwise, has the following options available where applicable as provided for in Appendix G or Appendix H and clause 3.9.4 of this part. The options will become available at the date of disestablishment. The teacher must advise the employer before the date of disestablishment which option s/he has selected. If no selection is made by this date the teacher will be deemed to have supernumerary status. The options are:

- (a) Supernumerary employment;
- (b) Retraining
- (c) Severance payment; (this option does not apply where the teacher volunteers to be considered for disestablishment as set out in Appendix H); and
- (d) Long service payment.

3.9.4 The options set out in clause 3.9.3 shall have the meaning set out in this clause and apply in the following manner. The term ‘school weeks’ used in clause 3.9.4(1) and 3.9.4(2) below mean those weeks forming part of the period during which in the normal course of events the school would be open for instruction.

(1) Supernumerary employment

Supernumerary employment is employment for a period of up to thirty (30) school weeks. A teacher whose position is disestablished as a result of voluntary election or otherwise who has either elected to be employed as a supernumerary teacher, or who has not taken up any of the other options set out in clause 3.9.3 before the date of disestablishment, shall be entitled to supernumerary employment in accordance with the following provisions:

- (a) (i) The teacher will continue to be employed at her/his existing salary for a period of thirty (30) school weeks from the effective date of the disestablishment of the position (normally at the beginning of term one of the following year);
- (ii) In the case of school mergers the teacher may elect to be employed at her/his existing salary for a period of forty (40) school weeks at the merged school or in any other school – provided that the board of that school gives consent – from the effective date of the disestablishment of the position and the provisions of 1.4.1(a) and 1.4.1(b) of Appendix G apply.
- (iii) In the case of school closure the teacher may be supernumerary for forty (40) school weeks in any other school provided that the board of that school gives consent.
- (b) The teacher may elect to take up her/his supernumerary employment at the same school or at any other school at the request of the teacher and with the approval of the original employer and the board at the other school;
- (c) The employer will encourage the teacher to find a suitable alternative permanent teaching position and will meet the actual and reasonable expenses of attending interviews at other schools where prior approval is given;
- (d) If during the supernumerary period the teacher applies for a permanent position of equal or lower status for which s/he is suitable at the school or centre where s/he is employed at the time, s/he shall be appointed to, or in the case of a merger reconfirmed or reassigned to, that position;
- (e) The teacher’s supernumerary employment shall cease upon the teacher being appointed to a new teaching position or upon the

teacher choosing to resign or at the expiration of the applicable number of school weeks specified in 3.9.4(1)(a) from the effective date of the disestablishment of the position, whichever is the earlier;

- (f) In the case of the closure, merger, sale or transfer of, or change of class of a school the supernumerary period shall begin on the date of the opening of the new school, unless the teacher takes up her/his supernumerary position at another school in terms of (b) above, in which case supernumerary status will begin from the effective date of disestablishment. Where a school is closed without replacement the teacher is entitled to the options set out in clause 39.93;
- (g) Where a supernumerary teacher is appointed to a new permanent teaching position and a transfer of location is involved, that teacher shall be entitled to normal removal expense provisions provided that this entitlement shall be exercised once only for each supernumerary period;

*Note: Attention is drawn to 8.1.1(h) in relation to removal expenses.*

- (h) Where a supernumerary teacher declines an offer of suitable appointment at the same salary from the employer with whom s/he is employed at the time, or applies for and declines an offer of appointment from another board, the teacher's supernumerary status shall cease forthwith;
- (i) During any period of supernumerary employment a teacher is entitled to any salary increases or increments due.

## (2) Retraining

Where a teacher's position is disestablished as the result of voluntary election or otherwise the teacher may elect to take a course of study approved by the Secretary for Education that will enhance or upgrade the teacher's skills as a secondary school teacher, provided that:

- (a) The teacher will continue to be employed at her/his existing salary for a maximum period of forty (40) school weeks from the effective date of the disestablishment of the position (normally at the beginning of term one of the following year);
- (b) The teacher is employed as a supernumerary teacher during this period and has the rights and obligations of a supernumerary teacher except as specifically provided in this clause;
- (c) There is no requirement on the employer to meet any costs and expenses of training, including course fees;
- (d) The teacher will provide evidence of attendance at the approved course of study where requested by the employer. The employer may make enquiries during the retraining period to

establish that the teacher is undertaking the approved course of study;

- (e) Where the approved course of study is for a shorter period than forty (40) school weeks the teacher is required to attend the school as a supernumerary teacher in periods when the school is open for instruction, provided that where the approved course of study is less than the applicable period under 3.9.4(1) (a) supernumerary status from the effective date of disestablishment of the position shall not extend beyond that period.
- (f) Where the course of study commences later than the effective date of disestablishment, the teacher is required to attend the school as a supernumerary teacher in periods when the school is open for instruction, except in special circumstances approved by the employer;
- (g) Where the teacher chooses to withdraw from the course before its completion, further employment shall cease, except where the employer and the Secretary for Education agrees that there was just cause for the withdrawal, the teacher shall return to the school as a supernumerary for the remainder of the retraining period.

(3) Severance Payment

Where a teacher's position is disestablished as a result of the application of the provisions in clause 1.3 of Appendix H or in Appendix G, the teacher may elect to be paid a severance payment provided that:

- (a) The teacher will be deemed to have supernumerary status for the period after disestablishment until severance payment is paid. This period will usually be that between the beginning of the next school year and the first (1st) of March census of the school roll. During this period, the rights and obligations of a supernumerary teacher will apply;
- (b) Where a school is closed without replacement at the end of a school year the teacher shall receive a salary for the supernumerary status up to 1 March. The severance payment shall be paid in the pay period immediately after 1 March. A teacher may request to be paid the severance payment prior to 1 March (although no earlier than the end of the school year) and in these circumstances the payment for the supernumerary period shall be for the period between the end of the school year and the date of payment of the severance payment;
- (c) Payment under this clause will be made in accordance with the provisions below. For the purposes of these provisions, ordinary pay is defined as basic taxable salary, plus regular taxable allowances paid on a continuous basis as at the effective date of disestablishment of the position. For teachers

on leave without pay, ordinary pay shall be the ordinary pay at the time of taking leave;

- (d) A teacher whose position is disestablished who elects to take a severance payment shall be paid according to the table below:

Length of Service	Weeks of Payment (ordinary pay)
Up to 3 years	7 weeks
Over 3 years and up to 5 years	15 weeks
5 years and over	23 weeks

- (e) For the purposes of calculating length of service for clause 3.9.4(3) and 3.9.4(4) only service as a teacher in a state or integrated school shall be counted. Non-permanent part-time service shall be calculated on the basis that 80 hours equals one month's service and 1000 hours equals one year's service. Where non-permanent part-time service consists of 20 or more hours per week it may be credited as full-time service. For the purposes of this clause service includes service credits for childcare where a teacher resigned or took leave to care for his/her children, on the basis of one third credit for each year of such leave up to a maximum of five years' credit;
- (f) Where a teacher having received a severance payment commences permanent employment within a number of weeks which is less than the number of weeks of payment received by the teacher as a severance payment under clause 3(c) above, the teacher shall refund the difference between the number of weeks for which they were without employment and the number of weeks for which severance payment was received. Provided that, for the purposes of this clause, employment means employment as a teacher in a state or integrated school or employment as a manual training teacher in an approved manual training establishment;
- (g) Any teacher receiving the severance payment will be deemed to have been paid in full for service to that date for the purpose of calculating service for any future sick leave, severance or long service payment entitlements;
- (h) Pay for employees shall be defined as:
- (i) For full-time employees, "Weekly" pay shall be 7/365 of ordinary pay;
  - (ii) For part-time employees, "Weekly" pay shall mean the teacher's average weekly earnings for the previous six/twelve months (whichever is more favourable to the teacher);

- (iii) Payment under this provision is conditional upon the teacher finishing on an agreed date (usually the first of March). Where the teacher resigns her/his position or is appointed to another teaching position before the date of payment no payment will be made.
- (4) Long Service Payment
- (a) Where a teacher's position is disestablished either as the result of voluntary election or otherwise the teacher may elect to receive a long service payment. The intention of this payment is to assist the teacher to withdraw from the teaching service. This option will be available on the following basis:
    - (i) The teacher will be deemed to have supernumerary status for the period from the effective date of disestablishment until long service payment is paid. This period will usually be that between the beginning of the school year and the first (1st) of March census of the school roll. During this period, the rights and obligations of a supernumerary teacher will apply;
    - (ii) Those with twenty-five (25) years' service and less than thirty (30) years' service shall be paid a lump sum of twenty-five (25) weeks' ordinary pay;
    - (iii) Those with thirty (30) years' service or more shall be paid a lump sum of thirty (30) weeks' ordinary pay.
  - (b) Where a school is closed without replacement at the end of a school year the teacher shall receive salary for the supernumerary status up to 1 March. The long service payment shall be paid in the pay period immediately after 1 March. A teacher may request to be paid long service prior to 1 March (although no earlier than the end of the school year) and in these circumstances the payment for the supernumerary period shall be for the period between the end of the school year and the date of the payment of the long service payment.
  - (c) For the purposes of the long service payment the definitions of service and of weekly ordinary pay are the same as those for severance set out above;
  - (d) Where a teacher having received a long service payment commences permanent employment within a number of weeks which is less than the number of weeks of payment received by the teacher as a long service payment under clause 4(a) above, the teacher shall refund the difference between the number of weeks for which they were without employment and the number of weeks for which long service payment was received; provided that, for the purposes of this clause, employment means employment as a teacher in a state or integrated school

or employment as a manual training teacher in an approved manual training establishment.

- (e) Any teacher received the long service payment will be deemed to have been paid in full for service to that date for the purpose of calculating service for any future sick leave, severance or long service payment entitlements;
- (f) Payment under this provision is conditional upon the teacher finishing on an agreed date [usually the first (1st) of March].

### 3.9.5 Preference in Appointment

- (a) Where a position which has permanent units attached has been reduced in status because of the operation of clause 3.9.1 and the actual roll is sufficient to justify its re-establishment (or its continuation or resumption at the former level if altered in status) before the actual disestablishment of that position takes effect the teacher concerned shall be entitled to be reappointed to the position at the re-established level unless s/he has resigned or been appointed to another permanent position. This subclause is not applicable to the holder of fixed-term unit(s).
- (b) Any teacher who holds a position which has permanent units attached, and that position is or is about to be altered in status as a consequence of the operation of clause 3.9.1, who applies for the position as advertised at its new status shall be appointed to that position unless in the meantime the teacher has been appointed to another permanent position provided that where the position has been reduced in status, the teacher concerned shall continue to be paid at the salary s/he was receiving immediately prior to the reduction for the period of one year from the effective date of the reduction provided that s/he continues to hold that position. Thus sub-clause is not applicable to holders of fixed-term unit(s).
- (c) During any period of salary protection a teacher is entitled to any salary increases or increments due.