

PPTA

NEW ZEALAND POST PRIMARY
TEACHERS' ASSOCIATION
TE WEHENGARUA

www.ppta.org.nz

**EMPLOYMENT
RELATIONS
PROBLEMS
/ PERSONAL
GRIEVANCES**

**GUIDE SERIES
TO THE STCA
& ASTCA
2007 - 2010**

February 2009



Introduction

This booklet is a summary guide to the operation of Part 9 of the Secondary Teachers' Collective Agreement (STCA) and Part 8 of the Area School Teachers' Collective Agreement (ASTCA). For the purposes of this pamphlet area school agreement references will appear in brackets after the secondary agreement references. It should be read in conjunction with Part 9 of the Employment Relations Act (2000).

Defining a personal grievance

The grounds on which a personal grievance can be taken are defined in clause 9.2 of the STCA or clause 8.2 ASTCA.

Feeling aggrieved with one's employer does not in itself provide grounds for a personal grievance. In summary a teacher may take a personal grievance against his/her employer or former employer because of a claim:

- a) that the teacher has been unjustifiably dismissed;
- b) that the teacher has been disadvantaged in her/his employment by an unjustifiable action of the employer;
- c) that the teacher has suffered discrimination in her/his employment because of her/his; colour, race, ethnic or national origin (*), sex, sexual orientation, marital status, religious belief, ethical belief, family status, disability, age, political opinion, employment status, family status or involvement in union activities.
- d) that the teacher has been sexually harassed (*) in her/his employment;
- e) that the teacher has been subjected to duress (*) in her/his employment because of membership or non-membership of a union.

(*) Definition of Terms - (i) ethnic, national origins, ethical belief have the meanings assigned to them by the Human Rights Act (1993); (ii) sexual harassment is defined by section 108 of the Employment Relations Act 2000; (iii) duress is defined by section 110 of the Employment Relations Act 2000.

Personal grievances should not be confused with disputes, which may arise when an employer refuses to comply with a collective agreement entitlement. Disputes are dealt with under clause 9.5 of the STCA and clause 8.1 of the ASTCA which refers to Part 10 of the Employment Relations Act.

Defining the “employer”

The Board of Trustees is the legal employer in all secondary and area schools. However, in relation to an alleged personal grievance the employer is also liable for the action of any “representative” who is employed in either:

- a) a position of authority over the worker alleging the grievance; or
- b) a position of authority over other workers in the workplace of the worker alleging the grievance.

Settlement of personal grievance

In a case of sexual harassment, special provisions in clause 9.4 of the STCA may apply before a personal grievance is undertaken. In all other circumstances, an alleged grievance must be settled in accordance with the procedures and requirements of the Part 9 of the Employment Relations Act 2000.

Role of the union

The association will investigate the alleged personal grievance of any member, and, where it believes a member’s complaint is justified, will work diligently to achieve a resolution. Members need to be aware that the association’s approach to personal grievances is to obtain a fair resolution as close to the original source of the dispute as possible.

If a member believes the actions of her/his employer establish grounds for a personal grievance, s/he should immediately consult the field officer responsible for the school. Our experience shows that the sooner the association becomes involved, the more likely it is that a satisfactory resolution will be achieved without recourse to the time-consuming forums of the Employment Authority or Court.



The process

Part 9 of the STCA and Part 8 of the ASTCA provides guidance for the resolution of employment relationship problems. Every effort should be made to resolve the problem as soon as possible and as close to the source as possible. PPTA members should seek advice from their Field Officer.

If discussion between the parties can not resolve the problem, mediation assistance may be sought from the Mediation Service of the Department of Labour.

If the problem needs to be formalised as a personal grievance, two things need to happen:

- a) Formal approval from the association needs to be given if PPTA is to provide advocacy (the member will need to discuss this with her/his Field Officer) and;
- b) the employer has to be notified within 90 days of the action giving rise to the grievance, or the employee becoming aware of that action.

Personal grievances are addressed through mediation in the first instance (although an application may be made directly to the Employment Relations Authority).

If the problem does not reach resolution at mediation, it may be referred for adjudication at the Employment Relations Authority. If PPTA advocacy is sought, this will require further approval.

In extreme cases recourse to the Employment Court may be required.

Where the circumstances giving rise to a personal grievance are alleged sexual harassment, a complaint may alternatively be laid with the Human Rights Commission.

Right of appeal

Any party dissatisfied with a decision by the Authority may appeal to the Employment Court against the decision within 28 days following the decision. Such appeals are limited to

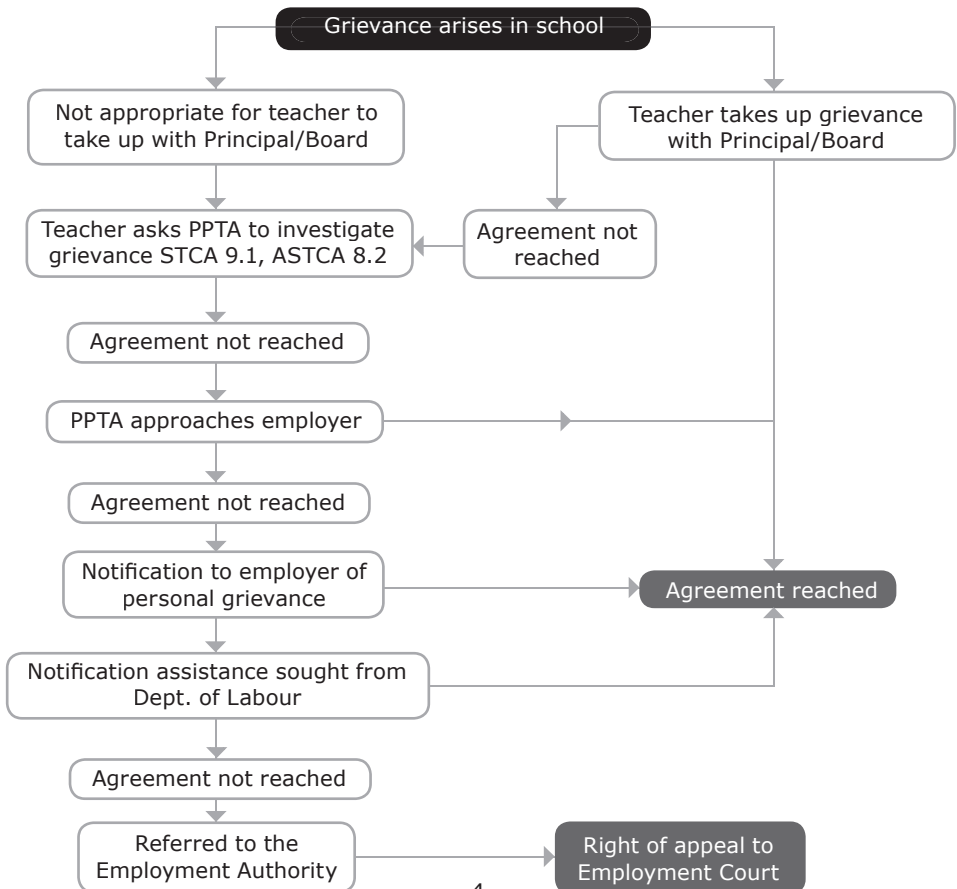


appeals on points of law.

The Employment Court

During the adjudication process, either party may apply for the matter to be referred to the Employment Court. The Authority may also refer the matter to the Court if it believes an important question of law is likely to arise or if the matter is of such a nature and urgency that it is in the public interest to refer it. Either party may appeal against a decision of the Employment Court to the Court of Appeal.

Summary of procedure





Advice and guidance

For further advice consult your local PPTA office.

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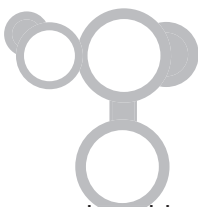
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This pamphlet has been produced by NZPPTA / Te Wehengarua and provides the association's contractual interpretation. Nevertheless, it is not a substitute for the collective agreement and should be read in conjunction with the relevant clauses of the appropriate collective agreement.

Pamphlets in this guide series include:

- Beginning teachers
- Community education
- Employment relations problems/Personal grievances
- Guidance for teachers in their relationships with students
- Guidance for teachers working with Pacific students in secondary schools
- Guidance for teachers working with Māori students
- Introducing Te Huarahi Māori Motuhake
- Making schools safe for people of every sexuality
- Meeting procedure
- Overseas teachers
- Parental leave
- Part-time teachers
- PPTA support service
- Sick leave
- Teacher competence
- Teacher conduct and discipline
- Teachers' salary guide: Area schools
- Teachers' salary guide: Secondary schools
- The staff representative on the board of trustees

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