



THE EDUCATION EMPLOYMENT (PERSONAL GRIEVANCE) REGULATIONS 1984

DAVID BEATTIE, Governor-General

ORDER IN COUNCIL

At the Government Buildings at Wellington this 5th day of March 1984

Present:

THE RIGHT HON. D. MACINTYRE PRESIDING IN COUNCIL

PURSUANT to sections 165D (1) (a) and 203 (g) of the Education Act 1964, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

ANALYSIS

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REGULATIONS

- 1. **Title and commencement**—(1) These regulations may be cited as the Education Employment (Personal Grievance) Regulations 1984.
- (2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

2. Interpretation—In these regulations, unless the context otherwise requires,—

“Arbitration Committee” means a committee established under regulation 8 (1) of these regulations:

“Employee” means a person employed by an Education Authority in a permanent position as a caretaker, cleaner, groundsman, or gardener, or in 2 or more of those capacities:

“Employer”, in relation to any employee, means the Education Authority by which that employee is or, as the case requires, was employed:

“Grievance Committee” means a committee established under regulation 6 (2) of these regulations:

“Parties”, in relation to a personal grievance, means the employee concerned, and that employee’s service organisation and employer:

“Personal grievance” means a grievance that an employee has against that employee’s employer because of a claim by that employee that—

(a) That employee has been unjustifiably dismissed; or

(b) Action other than dismissal by that employer (not being action of a kind generally applicable to employees (whether of that employer or of other Education Authorities) whose terms and conditions of employment are the same as those of that employee) affects that employee’s employment to that employee’s disadvantage:

“Service organisation”, in relation to any employee, means whichever of the following is appropriate by virtue of its coverage:

(a) The New Zealand Federated Caretakers’, Cleaners’, Lift Attendants’ and Watchmen’s Industrial Association of Workers or, as the case requires, any constituent Union or Association of that Association:

(b) The New Zealand Labourers, General Workers and Related Trades Industrial Union of Workers.

3. Grievance to be submitted initially to employer—Subject to regulation 4 of these regulations, an employee who has a personal grievance shall, as soon as is practicable after it arises, submit it—

(a) To the principal, or the chairman of the school committee, of the school concerned, in the case of an employee employed at a State primary school; or

(b) To the principal of the school concerned or the chairman of the employer concerned, in every other case,—

so as to afford an opportunity for the remedying of that grievance.

4. Notification of service organisation—Where—

(a) The submission of a personal grievance to a principal or chairman has failed to resolve it to the satisfaction of the employee concerned; or

(b) The nature of a personal grievance, or of the circumstances out of which it arises, is such that it would not be reasonable to require the employee concerned to meet the principal or chairman concerned directly,—

that employee may notify the appropriate service organisation, or a duly authorised representative of that organisation, of that grievance; and if that

organisation considers that there is sufficient substance in that grievance to warrant its resolution's being pursued, it shall forthwith take that grievance up with the employer concerned.

5. Reference to Director-General—(1) Where a service organisation—

- (a) Considers that there is not sufficient substance in a personal grievance to warrant its resolution's being pursued; or
- (b) Within a reasonable time of being notified of a personal grievance, fails or refuses to take it up with the employer concerned,—

the employee concerned may refer that grievance to the Director-General.

(2) Where, after a service organisation has taken up a personal grievance with the employer concerned, that grievance has not been resolved to the satisfaction of the employee concerned, any of the parties may refer it to the Director-General.

(3) Where a personal grievance has been referred to the Director-General under this regulation, the Director-General shall, as soon as is practicable, attempt to resolve it by mediation.

6. Reference to Grievance Committee—(1) If, and only if, the Director-General has been unable to resolve to the satisfaction of the employee concerned a personal grievance referred to the Director-General under regulation 5 of these regulations, the Director-General shall authorise the formation of a Grievance Committee in respect of that grievance.

(2) Where the Director-General has authorised the formation of a Grievance Committee in respect of a personal grievance, the employer concerned, and either the employee concerned or that employee's service organisation (as the case requires), shall, as soon as is practicable,—

- (a) Form a Grievance Committee comprising 3 (or such lesser number as they may agree) persons nominated by each, and a chairman who shall be—
 - (i) A person nominated jointly; or
 - (ii) Where no person is acceptable to each, a person nominated by the Director-General; and
- (b) Reduce that party's case to a statement in writing (setting out the alleged facts relied upon) and submit that statement to that committee.

(3) Where, within 28 days of being notified by the Director-General that the formation of a Grievance Committee has been authorised, any party to the personal grievance concerned fails or refuses to nominate any persons (or a sufficient number of persons) to be members of that committee, that grievance shall be dealt with under regulation 8 of these regulations, as if a Grievance Committee had been formed but—

- (a) That committee had not come to a unanimous decision; and
- (b) The parties to that grievance and the Chairman of that committee had not agreed that it should be resolved by the decision of the Chairman alone.

7. Decision of Grievance Committee—(1) If a Grievance Committee, after considering—

- (a) The written statements referred to it; and
 - (b) Any other evidence placed before it by the parties; and
 - (c) The oral submissions (if any) made to it by or on behalf of the parties,—
- comes to a unanimous decision relating to the resolution of a personal grievance, that grievance shall be resolved in accordance with that decision.

(2) If—

(a) A Grievance Committee, after considering the matters referred to in paragraphs (a) to (c) of subclause (1) of this regulation, does not come to a unanimous decision relating to the resolution of a personal grievance; and

(b) The parties, and the Chairman of that committee, agree that it should be resolved by the decision of the Chairman alone,—

that grievance shall be resolved in accordance with the decision of the Chairman alone.

(3) Subclauses (1) and (2) of this regulation shall be read subject to regulation 6 (3) of these regulations.

8. Reference to Arbitration Committee—(1) If, after a Grievance Committee has considered the matters referred to in paragraphs (a) to (c) of regulation 7 (1) of these regulations,—

(a) That committee does not come to a unanimous decision relating to the resolution of a personal grievance; and

(b) The parties, and the Chairman of that committee, do not agree that it should be resolved by the decision of the Chairman alone,—
the Chairman shall refer that grievance to an Arbitration Committee which, subject to subclause (2) of this regulation, shall comprise one person nominated by the employer concerned, one person nominated by the employee concerned or that employer's service organisation (as the case requires), and a Chairman nominated by the Director-General after consultation with both parties.

(2) Where, after the expiration of 28 days from the Director-General's nomination of a Chairman of an Arbitration Committee, any party to the personal grievance concerned required by subclause (1) of this regulation to nominate a member of that committee has failed or refused to do so, the Director-General shall nominate a member on behalf of that party.

(3) An Arbitration Committee shall consider—

(a) All evidence (if any), whether written or oral, placed before it by the parties to the personal grievance concerned; and

(b) The oral submissions (if any) made to it by or on behalf of the parties,—

and make a decision; and that grievance shall be resolved in accordance with that decision.

(4) Subject to subclause (5) of this regulation, the decision of an Arbitration Committee shall be the decision of a majority of its members.

(5) Where, in relation to any matter, an Arbitration Committee is unable to reach a majority decision, the decision of that committee in relation to that matter shall be the decision of the Chairman.

9. Duties of parties to personal grievances—In order that the work of the employer concerned should not be impeded but should at all times proceed as if that personal grievance has not arisen,—

(a) No employee of that employer shall discontinue or impede normal work, either totally or partly, because of a personal grievance:

(b) Until a personal grievance has been resolved, that employer shall not, by reason of that personal grievance or the circumstances out of which it arises, dismiss any employee.

10. Remedies—(1) Where a personal grievance is resolved on the basis of a decision that the employee concerned was unjustifiably dismissed, that decision may provide for all or any of the following:

- (a) The reimbursement to that employee by that employee's employer, of all or any part of any wages lost as a result of the dismissal;
 - (b) The reinstatement of that employee to the position formerly held, or some other no less advantageous position, by that employer;
 - (c) The payment to that employee of compensation by that employer.
- (2) Nothing in subclause (1) of this regulation shall limit the generality of regulation 7 (2) or regulation 8 (3) of these regulations.

P. G. MILLEN,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations prescribe a procedure for the resolution of personal grievances of caretakers, cleaners, groundsmen, and gardeners, employed by Education Authorities.

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 8 March 1984.

These regulations are administered in the Department of Education.