



Guidance for Boards of Trustees – Planned November 2018 Strike Action by NZEI Te Riu Roa

Assistance, Responsibilities, and Obligations

Version

26 October 2018

This document's purpose	3
About the planned November 2018 NZEI strikes	3
Key actions and considerations - flow chart	4
1. What to do before a strike	5
1.1 Plan for the school and students	5
1.2 Plan school transport.....	5
1.3 Plan extra supervision if needed.....	5
1.4 Plan when to notify families	5
1.5 Communicate with staff	6
1.6 Inform your local Ministry office whether you will be closed <u>or</u> open for instruction as soon as the Board has made this decision	6
2. What to do during and after a strike	6
2.1 Safety and administration	6
2.2 Fill out information for payroll on EPL's Strike Action Spreadsheet.....	6
2.3 Return the spreadsheet to EPL	8
2.4 Record unauthorised strike action	8
3. Further information about strikes	8
3.1 The Secretary's delegated powers: suspending striking employees	8
3.2 Expectations for student safety, supervision, and school closures.....	8
3.3 Union members who are on leave	9
3.4 If you can't stay open for instruction, it won't affect the length of your school year.....	9
3.5 What to do with the unused staffing entitlement.....	9
3.6 After the strike the Ministry sends details to MBIE on behalf of Boards	9
3.7 Advice from NZSTA and the Ministry.....	9
3.8 Legal support and indemnity for Boards	10
4. What to do after a strike	10
4.1 Communicate with non-striking union members	10
4.2 EPL will recover any overpayments made to striking union members.....	10
Appendices	
Appendix A: Contact details (Ministry of Education and NZSTA)	11
Appendix B: Sample letter to parents if a strike closes a school for instruction	12

This document's purpose

This document explains what Boards need to know and do to manage the series of full one day regional strikes by NZEI members planned for November 2018, and the supports available through the Ministry and NZSTA.

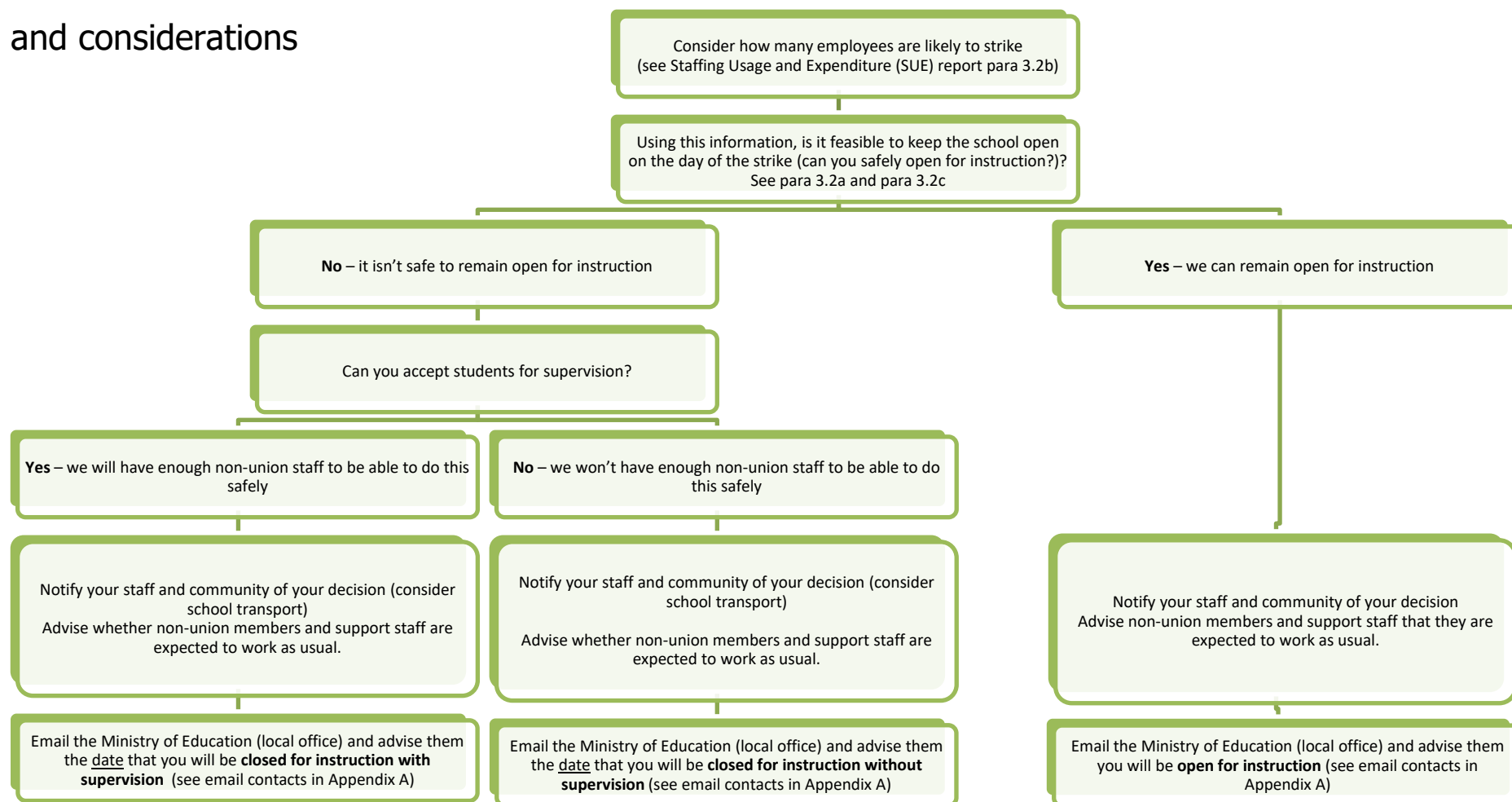
About the planned November 2018 strikes by NZEI principal and teacher members

There are two important points to note before you read any further:

- Firstly: while NZEI will be planning for a week of possible strike action, as far as individual schools are concerned, the required preparation is identical to that for the 15 August strike. There is a web link on the NZEI website which details the regions affected by the planned strike. The link also includes a searchable database for schools to use, to confirm which region and thus which day, they will be impacted by a proposed strike. The link is here: https://campaigns.nzei.org.nz/time/check_your_strike_day/
- Secondly: this guidance material includes payroll related actions required of a principal concerning returning the Strike Action Spreadsheet to Novopay. Although it is the Board's responsibility as employer to ensure the spreadsheet is filled in correctly, the principal or another Novopay authorised user are the only staff who can return the spreadsheet to EPL with the necessary security and privacy controls in place.

Please note, however, that a Board can require a principal to undertake these actions only after the strike is over and the principal is back on duty.

Key actions and considerations



On the day of the strike:
- ensure the safety of your students

1. What to do before a strike

1.1 Plan for the school and students

The union is required to give at least three calendar days' notice of a strike.¹

In planning for a strike, you should consider:

- how many employees are likely to strike (you can use the information in your Staffing Usage and Expenditure (SUE) report to do this – see para 3.2(b) below)
- whether it's feasible to keep the school open for instruction based on the number of staff striking
- if the school will be closed for instruction, whether and if so how to provide supervision for students who arrive at school and how to keep them safe (see para 3.2(a) and (c) below)
- ways to ensure that school transport providers and parents are aware of the Board's decision to keep the school open for instruction, close the school, or offer supervision, with the maximum amount of notice
- how to ask parents to indicate which children are likely to arrive at school if it's closed for instruction but providing supervision (if it's open for instruction students must attend as usual)
- the effect of a strike on non-striking staff.

Note that any Board member who is an NZEI member must not participate in the decision making process about whether to keep the school open or close the school for instruction on the day of the strike, as this would constitute a conflict of interest.

1.2 Plan school transport

Discuss strike arrangements with the school transport provider, and inform parents about what was decided.

1.3 Plan extra supervision if needed

Arrange for extra supervision, if needed, from day relievers who aren't striking or already scheduled to work that day. You can only hire additional relievers for health and safety reasons.² Costs can be charged to teachers' salaries (TS) or operational funding (BG).

Day relievers who were already scheduled to work and aren't on strike can teach students if the school remains open for instruction.

1.4 Plan when to notify families

Give parents and caregivers as much notice as possible of a strike and outline whether the school will be open for instruction or will close. If the school is closed for instruction, advise whether supervision will be offered. Appendix B has a sample letter to parents in case of supervision only, or closure.

¹ Section 74AC(1) State Sector Act 1988.

² Section 97 Employment Relations Act 2000.

1.5 Communicate with staff

- Decide, as a Board, whether or not non-union members and support staff are required to work as usual on the day of the strike, even if the school has to close for instruction, or whether they will be sent home for the day; and inform non-union members and support staff accordingly. The expectation is that support staff would normally be expected to work rather than being sent home. If the Board decides to send non-striking employees home, it will still have to pay them.

1.6 Please inform your local Ministry office whether you will be closed or open for instruction as soon as the Board has made this decision

- Advise your local Ministry office whether your school will be open or closed for instruction for the duration of the strike.
- Confirm the day the strike will impact your school.
- If your school will be closed for instruction, please also indicate to your local Ministry office whether you will be providing supervision for students who turn up to school.
- Local Ministry office email contact details can be found at Appendix A.

2. What to do during and after a strike

2.1 Safety and administration

On the day of the strike ensure the safety of your students.

2.2 Fill out information for payroll on EPL's Strike Action Spreadsheet

On the day of the strike (or earlier) Education Payroll Limited (EPL) will send the principal at each affected school a Strike Action Spreadsheet listing the school's union members who are covered by the strike notice (ie those covered by the PTCA or PPCA).

Here's what the spreadsheet looks like (in the actual spreadsheet for your school columns A, B, C, D, E and F will be pre-populated already).

	A	B	C	D	E	F	G	H
1	School No:	Employee No:	Job No:	Employee Name	Award	Tenure	Mark with 'X' if <u>did not</u> participate in Strike	Part Time Employees Only: Hours Normally Worked on the strike day between 7.00am & 7.00pm (H:MM)
2								
3								
4								

(a) Identify union members who weren't striking

It is the Board's responsibility as employer to ensure the spreadsheet is filled in correctly. However, the principal or another Novopay authorised user are the only staff who can return the spreadsheet to EPL with the necessary security and privacy controls in place. The spreadsheet is password protected with the principal's MoE number to ensure privacy. The spreadsheet must indicate which union members did not participate in the strike. (For example those union members may be absent but for other reasons such as sickness or bereavement leave).

Please note, however, that a Board can require a principal to undertake these actions only after the strike is over and the principal is back on duty.

Union members covered by the strike notice are deemed to be on strike unless they are identified on the Strike Action Spreadsheet as not striking.³ Identifying the union members who are **not** striking ensures they are paid as usual and reduces the administrative burden on schools. It is not reasonably practicable to avoid making overpayments in respect of this strike and EPL will automatically recover those overpayments from all staff covered by the strike notice unless they are identified in the spreadsheet as not being on strike.

The spreadsheet must be filled in and returned **electronically in the same format as it was sent to you** to returns.industrialaction@edpay.nz (even if there are no changes) by 5pm on the day after the strike in your region⁴. The spreadsheet must also be printed and signed by the principal or Board Chairperson, then archived in the school's official records but please do not send EPL the signed version, or pdfs as these cannot readily be processed

(b) **Provide the hours worked by part-time union members scheduled to work that day**

List the hours that part-time teachers who are striking would have usually worked on strike day. This ensures that regardless of the duration of the strike they will only have pay recovered for their normal work hours. If the part-time teacher would not usually have worked on the day of the strike, insert "0".

Note: The definition of a part-time teacher is any teacher who is employed for a FTTE load of **less** than 1.0. A full day is 8 hours. If a part-time teacher would normally have worked a full day on the day of the strike, insert "8".

Examples: A strike occurs on a Wednesday. A part-time teacher:

- doesn't work on a Wednesday. Insert "0" in the part-time hours column of the spreadsheet
- works on a Wednesday from 2pm to 3:30pm, ie 1.5 hours. Insert "1.5" in the part-time hours column of the spreadsheet
- works on a Wednesday from 9am to 12noon, ie 3 hours. Insert "3" in the part-time hours column of the spreadsheet
- works a full day on Wednesday. Insert "8" in the part-time hours column of the spreadsheet.

(c) **Identify part-timers who aren't striking**

If a part-time teacher is covered by the strike notice they will be listed on the Strike Action Spreadsheet, regardless of whether the strike day is one of their usual days of work. If they are absent from school for a non-striking reason, such as sick leave or the strike day not being a day they would usually work, indicate on the spreadsheet that they did **not** participate in the strike.

(d) **Add the names of short-term relievers who are union members and are participating in the strike**

Short-term relievers will not have been listed on the spreadsheet by EPL. If they are union members and were booked to work at your school on the day of the strike and are participating in the strike, add their names on the 'Relievers & Others' tab of the spreadsheet that you will receive. Please do not submit a timesheet for them for the hours that they were on strike. The Ministry will need to record their participation in the information that it is required to send to the Ministry of Business, Innovation and Employment (MBIE) after the strike in terms of section 98 of the Employment Relations Act 2000.

³ State Sector Act 1988, section 74AC(4).

⁴ Section 74AD State Sector Act 1988.

2.3 Return the spreadsheet to EPL

On the day after the strike, the spreadsheet needs to be printed out and signed by the principal or Board Chairperson, and archived in the Board's official records. The electronic version of the spreadsheet (an Excel spreadsheet using the xlsx format) needs to be returned **electronically** to returns.industrialaction@edpay.nz by 5pm on the day after the strike in your region. Please **do not** send the signed version, or pdfs as these cannot readily be processed. Any PDF's will be returned to the school for correction and resend.

2.4 Record unauthorised strike action

Non-union members aren't allowed to strike. If a non-union member who was scheduled to work withdraws their labour during the strike, record this as an unauthorised absence and notify EPL in the normal way for leave. They won't be paid and the Board will need to address it with the employee. Such an action could be an unlawful absence and disciplinary action could follow. Contacting NZSTA for advice in such a case would be a prudent course of action.

3. Further information about strikes

3.1 The Secretary's delegated powers: suspending striking employees

- (a) During the bargaining process for a new collective agreement, the Secretary for Education ('the Secretary') takes on some of the responsibilities and powers of the employer. This includes the power to suspend teachers and principals in the case of a strike.⁵
- (b) It is the Secretary, not Boards of Trustees, who decides whether to suspend striking employees. After the strike has commenced the Secretary informs the union of the suspension, and the union then tells the employees concerned. Boards don't need to do this. The suspension continues until the strike ends, unless it is revoked earlier. Teachers who are not union members will still be paid as normal.
- (c) It is the Secretary, not Boards of Trustees, who decides whether or not striking principals and teachers will be paid. Boards of Trustees do not have the power to override the Secretary's decision and pay striking workers.

3.2 Expectations for student safety, supervision, and school closures

- (a) During a strike, staffing will be reduced so there may be safety concerns. The health and safety of children and staff is paramount. If a school believes it can't safely stay open for instruction due to lack of staff, it may close the school (a "strike closure") and ask parents and caregivers to keep children at home.
A strike closure should be a last resort. Some caregivers may struggle to keep children home during school hours. For health and safety reasons, the Secretary expects schools to supervise students who do attend. Supervision can be given by:
 - teachers, and already scheduled day relievers, who aren't union members and therefore aren't striking
 - day relievers hired to supervise during the strike (day relievers can be hired to supervise for health and safety reasons but not to teach, see para 1.3)⁶
 - support staff, under supervision from a teacher, who normally interact with children.

⁵ Under delegation from the State Services Commissioner, under sections 74A and 74AA State Sector Act 1988.

⁶ Section 97 of the Employment Relations Act 2000 sets out the limitations on an employer's power to employ or engage another person to perform the work of a striking employee.

- (b) Boards can see how many teachers and teacher aides may be available for supervision on the day of the strike by checking their Staffing Usage and Expenditure (SUE) report. The 'collective agreement' column in the SUE report shows whether an employee is covered by the agreement and is a union member. Union teachers will be on strike, non-union teachers will not. No support staff will be on strike.
- (c) Some schools whose teachers and principal are all union members may not be able to access local relievers. If it's not feasible to have staff at school to supervise students who attend, you'll need to ensure every student's parents or caregivers are aware that the school will be closed, and will not be providing supervision of students.
- (d) The Education Act 1989 doesn't allow Boards to close part of a school (eg, teaching year 4 and 5 classes only).
- (e) Strike closures can't be implemented under section 65E Education Act 1989. That only covers epidemic, fire, flood, or other natural disasters.
- (f) Once a decision is made by the Board, please advise the Ministry of the decision without delay.

3.3 Union members who are on leave

Union members covered by the strike notice will be deemed to be on strike unless you inform EPL otherwise.⁷ EPL will send each school's principal a Strike Action Spreadsheet so that the Board can let the Ministry know through EPL if any union members were on leave (eg sick or bereavement leave) rather than on strike (see para 2.2).

The spreadsheet must be filled in and returned **electronically in the same format as it was sent to you** to returns.industrialaction@edpay.nz (even if there are no changes) by 5pm on the day after the strike⁸. The spreadsheet must also be printed and signed by the principal or Board Chairperson, then archived in the school's official records but please do not send EPL the signed version, or pdfs as these cannot readily be processed.

3.4 If you can't stay open for instruction, it won't affect the length of your school year

If a school is closed for instruction because of a strike, it won't impact on the length of the school year.⁹ The Board won't need to make up the shortfall of half days even if it closed but provides supervision.

3.5 What to do with the unused staffing entitlement

A teacher strike creates an unused staffing entitlement which Boards can use later in the year, or to employ relieving teachers during the strike.

3.6 After the strike the Ministry sends details to MBIE on behalf of Boards

Section 98 of the Employment Relations Act 2000 requires employers to report every strike to the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE). The Ministry of Education will do this on behalf of Boards, using the information supplied by Boards on the Strike Action Spreadsheet (see para 2.2). MBIE records the numbers of all union members striking and the hours and salaries lost.

3.7 Advice from NZSTA and the Ministry

For guidance during a strike, or advice on closing a school, contact the NZSTA Advisory and Support Centre or your regional Ministry office. See Appendix A for Ministry and NZSTA contact details.

⁷ Section 74AC(4) State Sector Act 1988.

⁸ Section 74AD State Sector Act 1988.

⁹ Section 65A(2A) Education Act 1989.

3.8 Legal support and indemnity for Boards

(a) **Support with legal actions**

If the Board is threatened or served with legal action as a result of the Secretary suspending striking staff and directing that they not be paid, the Ministry may give advice and advocacy services to the Board. If required, it will conduct any litigation on behalf of the Board in consultation with the Board's insurer. If threatened with legal action the Board should immediately notify:

- the Employment Relations Unit of the Ministry
- its own insurer, and
- NZSTA.

See Appendix A for Ministry and NZSTA contact details.

(b) **Board indemnity for costs or damages**

If a Board becomes liable for costs or damages arising out of the Secretary's decision to suspend and not pay striking employees, the Board is indemnified. But the indemnity doesn't apply if, in the reasonable opinion of the State Services Commissioner, the costs or damages were due to Board conduct which was engaged in without reasonable care or was not in good faith.

4. What to do after a strike

4.1 **Communicate with non-striking union members**

Notify each union member who did **not** participate in the strike (eg for reasons such as sickness or other leave) that they are recorded on the non-participation list and will be paid as normal¹⁰.

4.2 **EPL will recover any overpayments made to striking union members**

If an employee has been overpaid while on strike and suspended:

- The employee will be given written notice that they were overpaid and that the overpayment will be recovered¹¹
- EPL will recover the overpayment within two months of the notice.

¹⁰ State Sector Act 1988, s74AD(1)(b)

¹¹ The overpayment is recovered under section 6 Wages Protection Act 1983.

Appendix A: Contact details

For legal or operational questions about strike action in your school, please get specific advice from NZSTA.

NEW ZEALAND SCHOOL TRUSTEES ASSOCIATION (NZSTA)

- 0800 STAHELP (0800 782 435)
- Email: eradvice@nzsta.org.nz or govadvice@nzsta.org.nz

MINISTRY OF EDUCATION

Closure notifications are to be sent to your local Ministry of Education office:

- **Tai Tokerau:** enquiries.whangarei@education.govt.nz
- **Auckland:** enquiries.auckland@education.govt.nz
- **Waikato:** enquiries.hamilton@education.govt.nz
- **Bay of Plenty, Waiariki:** enquiries.BoP-Waiariki@education.govt.nz
- **Hawke's Bay, Tairāwhiti:** enquiries.napier@education.govt.nz
- **Taranaki, Whanganui, Manawatu:** enquiries.whanganui@education.govt.nz
- **Wellington:** enquiries.lowerhutt@education.govt.nz
- **Nelson, Marlborough, West Coast:** enquiries.nelson@education.govt.nz
- **Canterbury, Chatham Islands:** enquiries.christchurch@education.govt.nz
- **Otago, Southland:** enquiries.dunedin@education.govt.nz

You can notify your local Ministry office as soon as the decision to close the school is made.

MINISTRY OF EDUCATION

Employment Relations Unit

- Email: employment.relations@education.govt.nz

Education Payroll Limited (EPL)

- Email: info@educationpayroll.co.nz

Appendix B: Sample letter to parents if a strike closes a school for instruction

Dear Parents and Caregivers

The Board of Trustees can't provide teaching for students during the upcoming strike

The NZEI has advised the [Y] Board of Trustees that [the principal and] teachers at our school will be taking strike action on from [time] on [date] to [time] on [date] 2018.

The Board has carefully considered the availability of teaching staff, and unfortunately decided that we can't provide the normal teaching services during the strike so the school will officially be closed for instruction during the above times. [Accordingly it's important that you make alternative arrangements for the care of your child/children during the period of the strike as no supervision can be provided. *[Delete if closed for instruction but providing supervision]*

If this is difficult we can still supervise a small number of students if required. Please contact the office or send a note to indicate if your child/children will need this. *[Delete if all teachers and the principal are on strike so no supervision can be provided.]*

School transport will be *[add information discussed at 1.2 or delete if it doesn't apply]*.

I know that this is inconvenient for parents and students alike, but please be assured that student safety is our main concern.

Thank you for your understanding. Please contact [name] if you have any queries relating to this decision.

Yours sincerely

Chair Board of Trustees