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Jennifer Fraser
Kaiwhakahaere Matua
Te Pou Kaupapahere
By Email

CC:
Nicole Williams, Chief Advisor, Te Ranga Tikanga Kaimahi

Tēnā koe,

Re: Submissions on the proposal to extend the strike notice requirements in the Education and Training Act 2020

- [1] NZEI Te Riu Roa is a professional organisation and union representing the interests and issues of more than 49,000 members employed as teachers and leaders in the early childhood education and primary sectors (including Kura Kaupapa Māori and Wharekura), support staff in the early childhood, primary, intermediate, and secondary education sectors, school advisors employed by universities, and Learning Support staff employed by the Ministry of Education.
- [2] NZEI Te Riu Roa is a values-led, Te Tiriti o Waitangi-based organisation. This means that in all areas of work mokopuna Māori are considered first. We call this Mōku te Ao. Our submissions are informed by this approach. The main objective of NZEI Te Riu Roa is to advance the cause of quality public education generally while upholding and maintaining the just claims of our members individually and collectively.

The current legislative provisions and the proposed move to a minimum period

- [3] Section 589 in the Education and Training Act 2020 (“**the Act**”) currently requires that the Public Service Commissioner and each school board “are given notice in written or electronic form of the proposed strike 3 days before the commencement of the strike”. The wording of this provision is unusual because the requirement outlined is one where

boards “are given” notice at a specific point in time as opposed to the provision stipulating that school boards need to *have been* given notice by a specific day (at the latest). The choice of wording in section 589 is not only different to the standard strike notice provisions in section 86A of the Employment Relations Act 2000, but it is also a departure from the approach that is used to mandate specific strike notice periods for workers in essential services who are required to give “no less than” 3 or 14 days notice- (dependent on the type of essential worker).¹

- [4] The unusual statutory wording has the consequence that education unions are actively disincentivised from issuing formal strike notices early, because the wording is unclear about the legal effectiveness of an early strike notification. Common sense would dictate that it makes no sense whatsoever to prevent unions from issuing strike notices early. However, unions are unlikely to run the risk of issuing a legally ineffective strike notice if the applicable statutory provisions do not clearly give them the ability to notify early.
- [5] To work around the statutory framework, NZEI Te Riu Roa has in recent years informally advised schools of a strike well in advance but then formally notified the strike 3 days prior to the commencement of the strike as required by section 589. This arrangement has the advantage that employers have in practice received multiple successive communications about a proposed strike (which meant that they were less likely to miss one.) However, these kinds of “work-arounds” to deal with unsatisfactory statutory wording are far from ideal. A union that wants to notify employers of a strike early should not be left wondering whether they can actually do so.
- [6] Accordingly, NZEI Te Riu Roa agrees that an amendment to change the notice period in the Act to a minimum period is sensible for all sides involved.

The extension of the strike notice period

- [7] You have proposed two alternative solutions for extending the strike notice periods. One is the extension of strike notices to 3 *working* days and the second is the extension of the notice period to 7 calendar days.
- [8] In our view, neither option is particularly attractive because both options reduce the rights of workers and further disassociate school employees from other workforces- without there being any practical need for this. The proposals you have put forward are seemingly the result of complaints from school boards that say the 3 calendar days “doesn’t leave enough time for their schools to plan”² and complaints from parents about the impact of strikes.³ Neither of these reasons are particularly persuasive for the reasons we will outline below.

¹ Employment Relations Act 2000, s 90(3).

² Ministry of Education “Options to extend the school strike notification period in the Education and Training Act 2020” (1 August 2024) Ministry of Education-Re Tāhuhu o te Mātauranga <<https://www.education.govt.nz/our-work/consultations/open-consultations/proposed-amendments-to-the-education-and-training-act-2020/options-to-extend-the-school-strike-notification-period-in-the-education-and-training-act-2020/>>

³ Ibid.

[9] The practical reality of striking in schools is such that the perceived danger of principals and boards finding out about a strike action that is happening on a Monday on the previous Friday is negligible: In a school environment, principals know when school workers are balloted about strike action almost immediately. There is also no strategic advantage for unions in trying to keep employers in the dark about a pending strike action. After all, we do not negotiate with school boards directly, but with the Secretary for Education and ultimately the government. School boards are made up of parents, principals and staff representatives. These are all stakeholders that union members in practice want to see on their side when taking strike action. So, the government can expect that we will act in accordance with this interest.

[10]The table on pages 2-3 of your discussion document somewhat distorts the reality of how strikes in schools have actually been notified by NZEI Te Riu Roa:

The first point to make is that a lawmaker who (perhaps inadvertently) crafts legislation mandating a specific day when strike notices are to be issued can hardly complain when unions issue strike notices on that day as opposed to formally notifying the strike early.

[11]Secondly, the table does not explain in sufficient detail that NZEI Te Riu Roa did in fact advise schools well ahead of time about the details of the strikes: Ahead of the strike action on 16 March 2023, NZEI Te Riu Roa wrote to all affected school boards on 9 March 2023 advising them of the strike, the nature of the strike as well as the exact times etc. (**Appendix A**). We also advised boards to look out for the strike notice and when the strike notice would be sent. So, for practical purposes, it is hard to see what additional information schools actually gained from the formal strike notice. The same was true for the 2023 planned rolling strikes that you have described as only being notified 3 days before each strike “on a Saturday”. School boards had been informally notified of this planned action on 2 May 2023 (“**Appendix B**”).

[12]It is wholly incorrect to suggest that school boards and parents “cannot confirm arrangements until a formal notice is provided”⁴. If this assertion was true, NZEI Te Riu Roa would not bother sending out informal notifications to employing school boards ahead of time. However, we know that both principals and boards value these emails and use them to start planning for a strike day with their communities. As an aside, we remind you that formal strike notices can also be withdrawn and this also does not mean that schools should not plan for strike action if we tell them otherwise.

[13]In light of the informal notifications that we had in fact issued to employers, we are left with significant doubts that extending the strike notice period would result in less complaints to the Ministry. Instead, it is far more likely that these kinds of complaints point to either-

- a. communication issues at the school level (which meant that some board members were left unaware), or

⁴ Ministry of Education “Discussion document: Proposal to change notice period for school strikes” (online discussion document, 2024) at 3.

- b. the simple realisation that strikes in schools are disruptive if they are effective, or
- c. the Ministry having somewhat exaggerated the significance of the complaints actually received when compared to the overall number of schools affected.

[14] We are concerned that extending the current notice period risks needlessly prolonging the collective bargaining process and entrench positions between the parties at a time where relations are likely to be strained anyway. This risk is particularly acute if the 7-day option was chosen. In our experience, it can actually be preferable (for both sides) that, on occasion, workers have the ability to have a short and sharp strike that gives our members the ability to express their righteous anger and then both sides quickly return to the table to work on a solution. Our members value having this option. Letting workers' anger fester due to hostile strike legislation that makes school workers feel even more disenfranchised and disconnected from other workforces is unlikely to facilitate effective problem-solving- which should be the ultimate goal.

[15] Implementing a new statutory wording that introduces the concept of “working days” into the statutory wording is also undesirable, because it-

- a. is bound to lead to unnecessary arguments amongst workers (unions) and employers about what a working day is (there will be different ideas about this in the sector notwithstanding legal definitions⁵),
- b. is not in line with comparable provisions⁶ in the Employment Relations Act 2000 (we have already seen that this is undesirable from our experience with the current set-up),
- c. reduces workers' rights and the marginal cost of doing so outweighs the marginal benefit that will be experienced by boards.

[16] Another issue that has not come across effectively in your discussion paper is the practical reality of who our members are and the values they care deeply about: Our members would in practice not vote to go on strike in the first place if doing so would jeopardise the safety and wellbeing of ākonga. Legislation that ignores the very make-up of the workforce you are legislating for is unlikely to be very helpful to the sector.

Our preferred way forward

[17] We recommend simply amending section 589 of the Act to change the notice period to “no less than 3 days”. This would align the wording in the Act with the minimum notice requirements in section 90(3)(a)(ii) of the Employment Relations Act 2000. In our view, the amendment would have the practical effect that school boards will almost inevitably receive formal strike notices earlier than they do now, because-

- a. unions can be assured that their strike notices meet the requirements in the Act,
- b. strategic and pragmatic considerations already incentivise unions to notify schools early of strike actions, and

⁵ See section 13 of the Legislation Act 2019.

⁶ Employment Relations Act 2000, s90(3)(a)(ii).

- c. our members naturally expect us to give notice of strikes in ways that do not jeopardise the wellbeing of ākongā.

We understand that our proposal for a better alternative aligns with the submissions provided by the PPTA Te Wehengarua- which we support.

Side issue

[18] Since you are looking at changes to section 589 of the Act, we also want to raise a side-issue with you and this concerns the unusual interplay between section 589(6) of the Act and the Employment Relations Act 2000. Section 589(6) of the Act outlines that the notice requirements outlined in section 589 are “in addition to and do not limit or affect the Employment Relations Act 2000”.

[19] In isolation, this wording seems innocuous enough. It points readers towards the conclusion that they need to pay attention to the notice requirements in both statutes and the need to read them together- which is a fine goal. However, what makes the current wording slightly misleading is that section 86A in the Employment Relations Act (which deals with the notification of strikes) has the following to say about the interaction between the two statutes:

(4) *To avoid doubt, this section [s 86A] does not apply if notice is required under any of the following provisions:*

[...]

(c) Section 589 of the Education and Training Act 2020 (strikes in schools to be notified).

[20] So, in plain English, in cases where section 589 of the Act applies, the standard notice provisions in section 86A Employment Relations Act 2000 cease to apply. So, we recommend amending section 589(6) of the Act to clarify the interaction between the statutes.

[21] We would welcome the opportunity to discuss our submissions further with you, so please contact me at mark.potter@nzei.org.nz or Joschka Hoffmann (joschka.hoffmann@nzei.org.nz) to arrange a hui.

Nāku noa, nā



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