



Guidance for school boards about unlawful strikes

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1 THIS DOCUMENT'S PURPOSE

This document explains what school boards need to know and do to manage any unlawful strikes taking place. Some of the steps detailed in this document are included for your understanding but, in practice, it will be carried out by the principal, as the day-to-day manager of the school. For information about keeping schools open, refer to the document *Guidance to Boards, schools remaining open during unlawful industrial action*.

Strikes can only lawfully occur where they relate to collective bargaining or are for health and safety reasons. If strikes occur in response to the proposed implementation of a new policy or legislation, they will be unlawful (sometimes referred to as a 'wild cat' strike).

During collective bargaining, the Secretary for Education ('the Secretary') takes on most of the responsibilities and powers of the employer including the power to suspend teachers, principals and other school employees in the case of a strike. **For unlawful strikes, these responsibilities and powers lie with the school board.**

Appendix A provides a flowchart of how a board can respond to an unlawful strike.

Appendix B outlines the differences in a board's powers and responsibilities during lawful and unlawful strikes.

If you require further advice regarding your obligations, you can contact Te Whakarōputanga Kaitiaki Kura o Aotearoa | New Zealand School Boards Association, formerly the New Zealand School Trustees Association (NZSTA) or your usual employment adviser. **Appendix C** provides contact details.

2 PLANNING BY THE SCHOOL BOARD FOR POTENTIAL INDUSTRIAL ACTION

2.1 WHAT IS STRIKE ACTION?

A strike is the act of a number of employees who:¹

- Wholly or partially discontinue employment, or reduce the normal performance of it
- Refuse or fail to resume or return to employment
- Break their employment agreements
- Refuse or fail to engage in work they usually undertake in their employment
- Reduce their normal output or normal rate of work.

2.2 WHAT TYPE OF UNLAWFUL STRIKE ACTION COULD OCCUR?

Any strike action that occurs outside of collective bargaining or is not in relation to health and safety is unlawful under the Employment Relations Act (2000).²

The following are examples of unlawful strikes:

¹ Employment Relations Act (2000) s 81

² Employment Relations Act (2000) s 86

- Union led partial strike with several days' notice for example, taking time off to attend a protest or where staff refuse to perform certain duties.
- 'Grass roots' strike action planned by staff within schools, such as withdrawing labour for part of or the whole of a day or refusing to perform certain duties.

2.3 WHEN WILL MY BOARD KNOW IF AN UNLAWFUL STRIKE IS GOING TO OCCUR AT MY SCHOOL?

Due to the nature of unlawful strikes, there could be no warning of strike action occurring at your school. It will primarily be each school board's responsibility to respond to unlawful strikes by their staff.

3 SCHOOL BOARD POWERS DURING UNLAWFUL STRIKES

3.1 PRIOR TO UNLAWFUL STRIKE ACTION

If school boards become aware that an unlawful strike may be about to take place or that an employee intends to participate in a strike, they should consider informing their staff of what actions may be taken in response, including whether the employee may be suspended or undergo other disciplinary and legal action. It is therefore critical that the board and/or principal set expectations and warn staff of potential consequences prior to strikes occurring where possible.

Te Whakarōputanga Kaitiaki Kura o Aotearoa | New Zealand School Boards Association (formerly NZSTA) can provide you with a template to outline the rights and expectations of school employees, which we recommend is circulated to all staff as part of your preparations for potential unplanned strike actions.

3.2 SUSPENDING EMPLOYEES

Boards can suspend an employee who is party to the unlawful strike over any unlawful strike actions undertaken outlined in 2.1 after the strike has started.³

- The maximum period of suspension is for the duration of the strike action. For example, employees who engage in partial unlawful strike action by refusing to teach for one hour can only be suspended for this hour.
- A suspended employee is not entitled to remuneration for the period of the suspension.
- The board must give notice to the employee that they are being suspended as soon as possible after becoming aware the employee is striking, and tell them which section of the Employment Relations Act they are being suspended under. See **Appendix D** for a template letter to striking staff and **Appendix F** for a template letter to all staff.

Note: In the case of lawful strikes, the Education and Training Act 2020 allows a single suspension notice to be sent to the union by the Ministry. This does not apply to unlawful

³ See sections 87 – 89 of the Employment Relations Act 2000.

*strikes, so if the board wants to suspend striking employees, **the responsibility to send a letter to each striking employee lies with the board.***

3.3 RECOVERING OVERPAYMENTS

Boards can instruct Education Payroll Limited to recover overpayments.⁴

- Due to the timings of the payroll system, if an unlawful strike occurs, it is unlikely that any deduction will be able to be made in the pay period the strike falls in, therefore any overpayments will need to be recovered.
- If the board decides to recover an overpayment, they need to send notices to the striking employees from the school board after the overpayment occurs and before their next pay day. See **Appendix E** for a template letter.
- Note that in the case of lawful strikes, the Ministry can instruct Education Payroll Limited to recover overpayments and the Ministry sends notices to school employees. This does not apply to unlawful strikes, so **the responsibility to send an overpayment notice to each employee lies with the board.**

3.4 RECORD KEEPING

In an unlawful strike, there is no requirement to provide a list of employees who participated in the strike to the Ministry of Education.

However, record of the strike must be provided to the chief executive of the Ministry of Business, Innovation and Employment within one month following the end of the strike using the prescribed form: [Form 3 – Record of strike or lockout \(employment.govt.nz\)](https://www.employment.govt.nz/forms/3).

3.5 DISCIPLINARY AND LEGAL ACTION

As the employer, you must make any decisions about how you manage any unlawful strikes, including whether disciplinary or other legal action is taken against individual employees. Furthermore, there may be legal avenues available to you against the unions.

If you require any further advice in regard to disciplinary or legal actions open to you, contact Te Whakarōputanga Kaitiaki Kura o Aotearoa | New Zealand School Boards Association (formerly NZSTA) or your usual employment adviser.

4 FREQUENTLY ASKED QUESTIONS

4.1 WHAT IF A PART TIME STAFF MEMBER WANTS TO STRIKE BUT THE HOURS THEY WORK ARE NOT DURING THE STRIKE ACTION?

If their normal hours are not over the strike period, then they are not on strike.

⁴ See section 6 of the Wages Protection Act 1983

4.2 CAN NON-UNION STAFF STRIKE?

Any employee who participates in a 'wild cat' strike is doing so unlawfully, regardless of union membership. This guidance applies to both union members and non-union employees who are striking.

4.3 WHAT, IF ANYTHING, SHOULD A BOARD DO IF AN EMPLOYEE IS ABSENT ON THE DAY OF THE STRIKE, AND THE BOARD BELIEVES THIS IS NOT DUE TO GENUINE SICKNESS BUT IS DONE IN SUPPORT OF THE STRIKE?

As a first step, the board could ask for a medical certificate (noting that this would likely be at the board's cost)⁵ and then it can assess whether further action is necessary. It would be wise to discuss the circumstances of each such case with Te Whakarōputanga Kaitiaki Kura o Aotearoa | New Zealand School Boards Association or the board's usual employment adviser first. Leave for the employee will need to be booked with Education Payroll (EPL), either sick leave, or leave without pay as appropriate.

4.4 CAN THE PRINCIPAL AND/OR STAFF BOARD REPRESENTATIVE BE INVOLVED IN THE BOARD'S DECISION MAKING REGARDING UNLAWFUL STRIKE ACTIONS?

If the principal and/or staff board representative are involved in the strike, they should not be involved in voting on board decisions in response to the strike, as this could be deemed a conflict of interest. Boards should seek advice from Te Whakarōputanga Kaitiaki Kura o Aotearoa | New Zealand School Boards Association (formerly NZSTA) or their usual employment adviser if they require more guidance.

4.5 IF ONLY ONE STAFF MEMBER IS STRIKING IS IT STILL A STRIKE?

A strike is a concerted action meaning that it is done by more than one person. If this staff member is striking in concert with members of another school, this could be considered to be strike action. If you have only one staff member who states that they are on strike, or who is withdrawing labour for part of or the whole of a day, or refusing to perform certain duties, you should seek advice from Te Whakarōputanga Kaitiaki Kura o Aotearoa | New Zealand School Boards Association (formerly NZSTA) or your usual employment adviser regarding any disciplinary or legal actions you can undertake.

5 NOTIFICATION/REPORTING OBLIGATIONS OF BOARDS

5.1 HOW DOES THE BOARD ORGANISE THE DEDUCTION OF WAGES OR RECOVERING OVERPAYMENTS OF STRIKING STAFF?

If a staff member is on strike and they are being suspended, this needs to be loaded into the payroll system in accordance with the instructions of Education Payroll Limited (EPL).

⁵ Holidays Act 2003, s 68(1A).

5.2 EDUCATION PAYROLL LIMITED STRIKE SCHEDULE INSTRUCTIONS

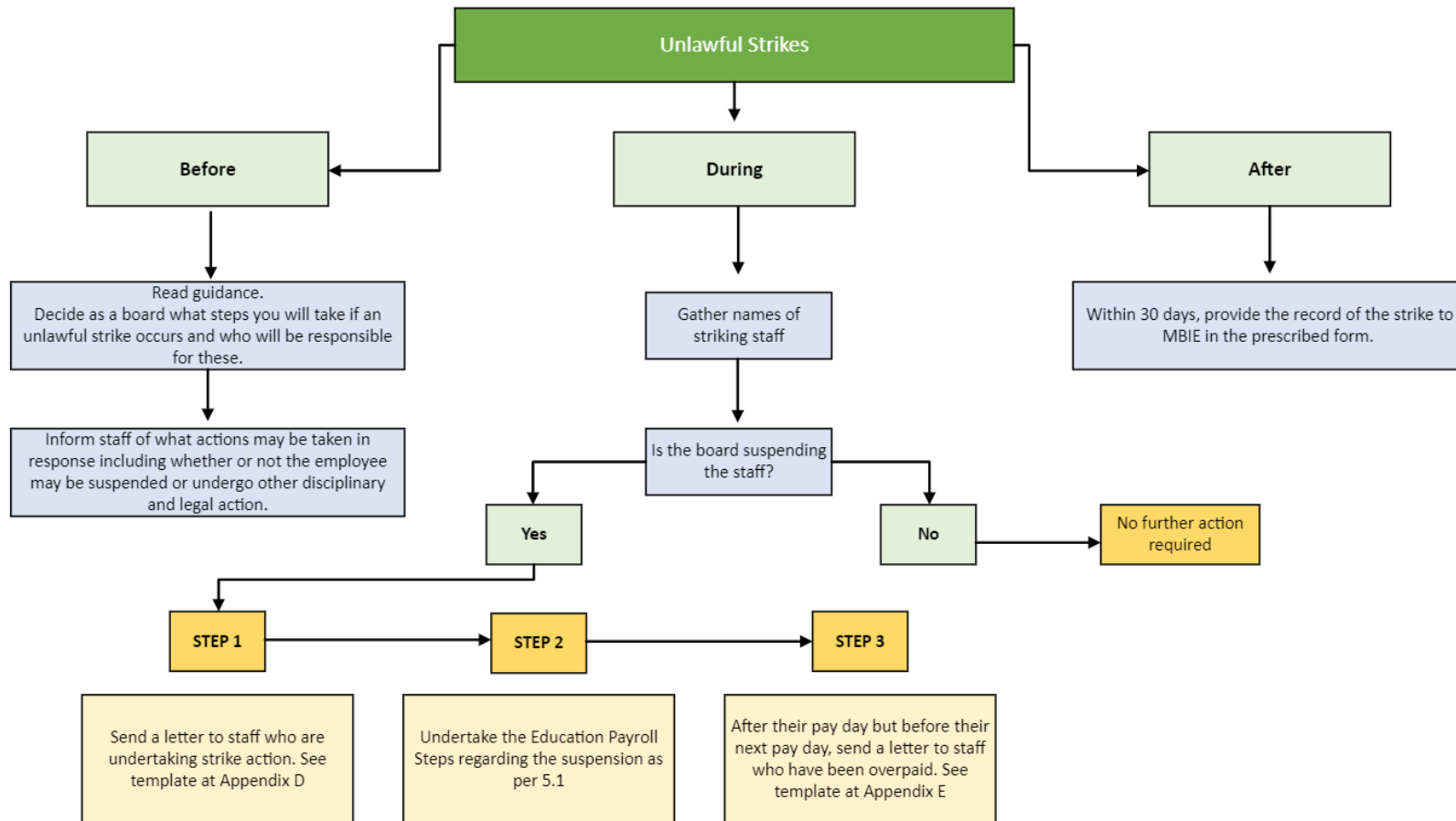
You will need:

- the strike schedule spreadsheet which you can download from:
edpay.govt.nz/Site/Tools_to_help_you/A-Z-of-Payroll/S/strike-unlawful-or-wildcat.aspx
- your school number
- the date and length of the strike
- details of all employees at your school who are participating in the unlawful strike:
 - o employee's name
 - o employee number
 - o employee's award code and
 - o for part-time employees: their usual hours of work during the date and length of the strike action.

Step	Action																																
1	Open the spreadsheet and enter your school details and the date and length of the strike. <table><tr><td>School Number:</td><td>00001</td><td></td></tr><tr><td>School Name:</td><td>Nelson School</td><td></td></tr><tr><td>Strike Date:</td><td>27/07/2024</td><td></td></tr><tr><td>Strike Hours:</td><td>4</td><td></td></tr></table>	School Number:	00001		School Name:	Nelson School		Strike Date:	27/07/2024		Strike Hours:	4																					
School Number:	00001																																
School Name:	Nelson School																																
Strike Date:	27/07/2024																																
Strike Hours:	4																																
2	Enter the details of each teacher at your school who is participating in the unlawful strike.																																
3	For part-time employees only: In column D, enter the hours they normally have worked during the hours of the strike action. Use the format H:MM For example: <table><tr><th>During the time of the strike action, if...</th><th>then write...</th></tr><tr><td>they would normally have been working between 1.00pm and 3.30pm</td><td>2:30</td></tr><tr><td>they would normally not have been working</td><td>0:00</td></tr></table>	During the time of the strike action, if...	then write...	they would normally have been working between 1.00pm and 3.30pm	2:30	they would normally not have been working	0:00																										
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they would normally have been working between 1.00pm and 3.30pm	2:30																																
they would normally not have been working	0:00																																
4	Save the spreadsheet. Here is an example of a completed spreadsheet: <table><tr><td>School Number:</td><td>00001</td><td></td><td></td></tr><tr><td>School Name:</td><td>Nelson School</td><td></td><td></td></tr><tr><td>Strike Date:</td><td>27/07/2024</td><td></td><td></td></tr><tr><td>Strike Hours:</td><td>4</td><td></td><td></td></tr><tr><td>Employee No:</td><td>Job No:</td><td>Award</td><td>Part Time Teachers and Non-teachers: Hours Normally Worked during strike period</td></tr><tr><td>0443136</td><td>02</td><td>PTC7</td><td>3:00</td></tr><tr><td>0500689</td><td>01</td><td>SSSHR</td><td></td></tr><tr><td>0500777</td><td>01</td><td>SSSHR</td><td>8:00</td></tr></table>	School Number:	00001			School Name:	Nelson School			Strike Date:	27/07/2024			Strike Hours:	4			Employee No:	Job No:	Award	Part Time Teachers and Non-teachers: Hours Normally Worked during strike period	0443136	02	PTC7	3:00	0500689	01	SSSHR		0500777	01	SSSHR	8:00
School Number:	00001																																
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0443136	02	PTC7	3:00																														
0500689	01	SSSHR																															
0500777	01	SSSHR	8:00																														

	Please note that for full-time employees, the hours worked will be 8:00. Part-time employees might be less than this depending on their normal hours on the day of the unlawful strike.
5	Email the spreadsheet to support@novopay.govt.nz with the subject line “Strike deductions”.

6 APPENDIX A: FLOWCHART OUTLINING STEPS FOR A BOARD



7 APPENDIX B: TABLE OUTLINING THE DIFFERENCES BETWEEN A LAWFUL AND UNLAWFUL STRIKE

Step/Power/Obligation	Lawful strike in relation to collective bargaining	Unlawful strike
Notice		
Notice of the Strike	The union must provide 7 days' notice of the strike to both the Secretary and each board. ⁶	Will possibly provide informal notice, and/or media comment, but the strike may also occur with little to no notice.
Payment of striking workers		
Suspension of striking employees	The Secretary can give a notice to the union suspending all striking members of the union for the duration of the strike. Individual notices to each employee are not required.	The Secretary has no power to school employees during an unlawful strike. School boards do have the power to suspend employees in these circumstances. School boards must give notice of suspension to each individual employee (not to the union).
Suspension of pay (suspending employees are not entitled to be paid)	The Secretary sends notice to EPL instructing them not to pay union members participating in the strike and Education Payroll Limited is required to comply with that instruction.	Any instruction to not pay an employee for the period of the strike must be made by the Board to Education Payroll Limited.
Recovering overpayments	Employees must be given a notice that contains various specified pieces of information before a strike-overpayment can automatically be recovered via payroll. The Secretary can give that notice.	Boards must give the required notice to each employee.

⁶ Education and Training Act 2020, section 589.

<i>Information about participation in strike</i>		
Information re who participated in the strike.	After a strike commences, Boards are required to inform the Secretary (via Education Payroll Limited which employees did not participate in the strike. This is done via Education Payroll Limited' "Strike Action Screen".	There is no requirement for Boards to inform the Ministry of Education of who is or is not participating in the strike.
Keep a record in the prescribed form and provide it to the Chief Executive of MBIE within 1 month after end of strike.	The Ministry of Education provides the record of the strike to MBIE in the prescribed form	Each affected school board will have to provide the record of the strike to MBIE in the prescribed form.
<i>Enforcement</i>		
Enforcement – e.g., seeking compliance orders, injunctions, or penalties where there are breaches of the Employment Relations Act	The Secretary is able to file proceedings as she has the "employer" powers.	Boards have powers to bring claims against the unions and/or employees in response to unlawful strikes.

8 APPENDIX C: CONTACT DETAILS

For legal or operational questions about strike action in your school, please get specific advice from Te Whakarōputanga Kaitiaki Kura o Aotearoa | New Zealand School Boards Association or your usual employment adviser.

TE WHAKARŌPUTANGA KAITIAKI KURA O AOTEAROA <i>New Zealand School Boards Association</i>
Advisory and Support Centre - 0800 782 435 Email: eradvice@nzsta.org.nz or govadvice@nzsta.org.nz

Closure notifications are to be sent to your local Te Mahau office:

TARI Ā- ROHE <i>Regional Offices</i>
Regional offices - Ministry of Education

MINISTRY OF EDUCATION	
Employment Relations Email: employment.relations@education.govt.nz	Education Payroll Limited Email: information@edpay.co.nz

9 APPENDIX D: TEMPLATE LETTER – SUSPENSION OF STAFF

Date

Dear Mr/Ms Surname

I understand that you are participating in unlawful strike action commencing on [date/time] where you will be [set out details of the nature of the strike action].

This letter is to advise you that you are suspended from your employment with effect from the start of the strike until the strike action ends. We are legally required to tell you what section of the Employment Relations Act you are being suspended under, which is section 87 of the Employment Relations Act 2000.

Under section 87 of the Act, you are not entitled to be paid during the period of your suspension. This means you are not entitled to remuneration (salary, wages, allowances, or other emoluments) in respect of the period of the suspension. Education Payroll Limited will be instructed accordingly.

If you have any queries about this matter or the terms of your suspension, please contact me directly.

Yours sincerely,

[Name]

[Presiding Member]

[Name of School]

10 APPENDIX E: TEMPLATE LETTER – OVERPAYMENT OF STAFF

Date

Dear «First_Name»

This notice applies to you because you participated in a strike which commenced on [date].

You were overpaid on [insert pay date] as you received payment for a [half day/day] that you were on strike and suspended and were therefore not entitled to be paid. The timing of the strike meant that it was not reasonably practicable to avoid paying you while you were on strike.

This letter is notice that the overpayment will be recovered under s 6(2) of the Wages Protection Act 1983. The overpayment will be recovered in one pay period, rather than being recovered over multiple pay periods. The overpayment will be recovered during the next two months. This will happen automatically, there is nothing you need to do.

If you have any concerns about this overpayment recovery please raise them with us, the <Name of School> board (as your employer) or your union, whichever is appropriate.

Yours sincerely,

[Name]

[Presiding Member]

[Name of School]

11 APPENDIX F: TEMPLATE LETTER – GENERAL NOTICE TO STAFF

Notice to all staff – strike action and suspension

The board of [school name] has become aware that some staff members have resolved to undertake protest action by way of [insert action here].

This strike action differs from the strikes that took place during the bargaining for collective agreements in 2023. Those strikes were lawful while the proposed action is considered unlawful.

The Employment Relations Act 2000 sets out a number of requirements that must be met for a strike to be lawful. These include notice from the union, that the strike relate to bargaining for a collective agreement, that the parties began bargaining at least 40 days earlier, and that the existing collective agreement has expired. You can read more about strikes at [Employment New Zealand](#). The proposed strikes do not meet the requirements in the Employment Relations Act 2000 and are therefore unlawful.

As a result, I write to all staff today to advise that the board has resolved that any employee who participates in unlawful strike action will be suspended in accordance with section 87 of the Employment Relations Act 2000 while strike action occurs.

Suspended employees cannot carry out any work duties and are **not** entitled to be paid for the period of the suspension.

Please note in some cases engaging in unlawful strike action could be a disciplinary issue. Any disciplinary process that may occur following an employee's participation in unlawful strike action will be carried out in accordance with the applicable part or clauses of their employment agreement.

If you have any questions about this letter, please do not hesitate to contact [me/appropriate person].

Ngā mihi nui

[Name]

[Presiding Member]