



# Guidance for Area School Boards – Planned NZEI and PPTA Member Teachers' and Principals' Strike on 16 March 2023

Assistance, Responsibilities, and Obligations as at 10 March 2023

In respect of Area Schools, this guidance replaces the guidance published on 1 March



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## This document's purpose

Please note that this guidance replaces guidance for area school boards included in the secondary and area school guidance published on 1 March 2023. The 1 March guidance now applies to secondary school boards only.

This document explains what school boards need to know and do to manage the full one-day strike by union-member (both PPTA and NZEI) teachers and principals planned for 16 March 2023 at area schools, and the supports available through the Ministry and NZSTA.

Note that some of the steps detailed in this document are included for your understanding. In practice, duties of any principal who is a union member (either PPTA or NZEI) will <u>not</u> be carried out on 16 March, as principals who are union members will be on strike. As a result these duties will be carried out by the school board's presiding member on the day of the strike, and by the principal as the day-to-day manager of the school the day after the strike. For principals who are not union members, their responsibilities continue during the strike.

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.<sup>1</sup>

It is the Secretary, not school boards, who decides whether to suspend striking employees. If the Secretary decides to suspend striking employees, then after the strike has commenced, the Secretary informs the NZEI and PPTA of the suspension and the unions then tell the employees concerned. Boards don't need to do this. The suspension continues until the strike ends unless it is revoked earlier. Teachers and principals who are not union members will still be paid as normal. Overpayments made in respect of the strike will be recovered from striking teachers and principals by Edpay after the strike.

It is the Secretary, not school boards, who decides whether striking teachers and principals will be paid. School boards **do not** have the power to override the Secretary's decision and pay striking workers.

## About the planned strikes by NZEI and PPTA members

- Union-member area school teachers and principals (both PPTA and NZEI members) are striking for one day on 16 March 2023 from 7am to 7pm.
- The strike is nationwide on that date and will affect all schools.
- This is a full strike (i.e., a complete withdrawal of labour).
- A quick guide to the impact of the strike on different categories of teaching and non-teaching staff and principals is provided at Appendix C.
- All NZEI-members employed at primary and intermediate schools (teachers and principals), and PPTA-member teachers employed at secondary schools (but not principals) are at also striking on the same day. Separate guidance is available for primary and secondary school boards.

<sup>&</sup>lt;sup>1</sup> Under delegation from the Public Service Commissioner. See sections 586, 587, and 592 of the Education and Training Act 2020.

# Key actions and considerations Consider how many employees are likely to strike (see Staffing Usage and Expenditure (SUE) report para 3.1 (b) of this guidance) Using this information, is it feasible to keep the school open on the day of the strike (can you safely open for instruction?)? See para 3.1 (a) and para 3.1 (c) of this guidance No – it isn't safe to remain open for instruction **Yes** – we can remain open for instruction Can you accept students for supervision? **Yes** – we will have enough non-union staff (and non-union No – we won't have enough non-union staff (and non-untion relievers) to be able to do this safely relievers) to be able to do this safely Notify your staff and community of your decision (consider Notify your staff and community of your decision (consider school transport) Notify your staff and community of your decision school transport) Advise non-union members, non-union relievers and support Advise whether non-union members and support staff are Advise whether non-union members and support staff are staff that they are expected to work as usual. expected to work as usual. expected to work as usual. Email the local Te Mahau office and advise them the date that Email the local Te Mahau office and advise them the date that Email the local Te Mahau office and advise them you will be you will be closed for instruction with supervision (see email you will be closed for instruction without supervision (see open for instruction (see email contacts in contacts in Appendix A of this guidance) email contacts in Appendix A of this guidance) Appendix A of this guidance) On the day of the strike:

# By 5pm on the day after the strike:

- ensure the safety of your students

- 1. Complete the Strike Action Screen electronically.
- 2. Print, sign and archive a hard copy of the Strike Action Screen. It doesn't matter if you haven't made any changes to the Screen, you are still required to complete it.

  3. Advise union members who did not participate in the strike that their name has been included in the list submitted to EdPay see para 2.5.

#### 1. What to do before a strike

#### 1.1 Plan for the school and students

The unions are required to give three calendar days' notice of a strike to the Secretary for Education (under delegation from the Public Service Commissioner) and each school board.<sup>2</sup> The notice must state the schools that will be affected by the proposed strike, the date and time the strike is to commence and the date and time on which it is to end.<sup>3</sup> This detail provides a useful starting point for your preparations.

In preparing for a strike, you should consider:

- how many employees are likely to strike. (This will be all principals and teachers who are members of NZEI or PPTA). You can use the information in your Staffing Usage and Expenditure (SUE) report to do this see para 3.1 (b).
- whether it's feasible to keep the school open for instruction based on the number of staff striking.
- the absence of a significant proportion of total teacher staffing in area schools, where the
  total teaching staff comprises a mixture of primary and secondary teachers may mean that
  some area school boards will need to undertake an assessment to determine whether it is
  safe to keep the school open for instruction during the proposed strike according to actual
  numbers expected on the day.
- if the school will be closed for instruction, how to provide supervision for students under 14 years of age who arrive at school and how to keep them safe (see paras 3.1 (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 students 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: Any NZEI or PPTA member on a school board (principal and teacher staff representative) 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. A principal who is an NZEI or PPTA member may give advice to the board but not vote on decisions related to the strike.

## 1.2 Plan school transport

Discuss strike arrangements with the school transport provider, then 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 and those staff members should only perform work to the extent necessary for reasons of health and safety.<sup>4</sup> Costs can be charged to teachers' salaries (TS) or operational funding (BG).

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

<sup>&</sup>lt;sup>2</sup> Education and Training Act 2020, section 589.

<sup>&</sup>lt;sup>3</sup> Or an event, on the occurrence of which, the strike will end.

<sup>&</sup>lt;sup>4</sup> Section 97 Employment Relations Act 2000.

#### 1.4 Notify families

As soon as you receive notice of the strike, notify parents and caregivers and advise whether the school will be open for instruction, closed for instruction but providing supervision or will close. Appendix A has a sample letter to parents in case of supervision only, or closure.

#### 1.5 Communicate with staff

If a board decides to close the school for instruction on the day of the strike, it needs to decide whether non-union teachers will be invited to attend work, and whether support staff are required to work as usual on the day of the strike; or whether staff will be sent home for the day.

Inform non-union teachers and support staff accordingly. The expectation is that support staff would normally be expected to work rather than being sent home.

If the school board decides to send non-striking employees home, they will still be paid.

# 1.6 You must inform your local Te Mahau office whether you will be closed <u>or</u> open for instruction as soon as the board has made this decision

- If your school will be closed for instruction, please also indicate to your local Te Mahau office whether you will be providing supervision for students, particularly for those under 14 years of age. Your principal will be contacted by Te Mahau about this.
- Local Te Mahau office email contact details can be found at Appendix B of this guidance.

### 2. What to do during and after a strike

### 2.1 Safety and administration

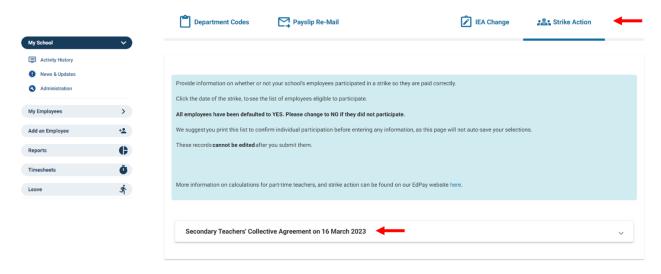
On the day of the strike, ensure the safety of your students and staff who remain on site.

### 2.2 Complete EdPay's Strike Action Screen

The Strike Action Screen will be available in Edpay on the morning of the strike and will be available until 5pm on the first working day after the strike. The screen can be found under My School -> Administration and will list the school's teacher and principal union members.

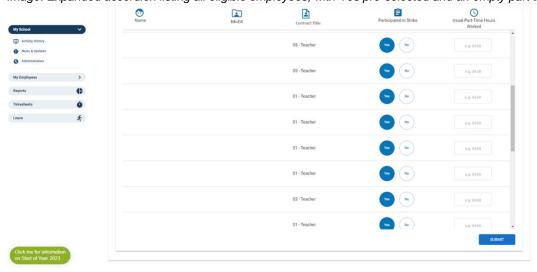
Here's an example of what the Strike Action Screen looks like:5

Image: Navigation to Strike Action tab



<sup>&</sup>lt;sup>5</sup> There will be five different versions: secondary teachers, primary teachers, area teachers, primacy principals, area principals.

Image: Expanded accordion listing all eligible employees, with Yes pre-selected and an empty part time hours field



## (a) Identify union members who weren't striking

The delegated EdPay authorised user<sup>6</sup> (normally the principal, acting on behalf of the board) is required to use the supplied Strike Action Screen to identify the union members who are **not** participating in the strike, e.g., they may be absent but for other reasons such as sickness or bereavement leave. Access to the Strike Action screen is password protected with the principal's MoE number to ensure privacy.

Union members covered by the strike notice are deemed by law to be on strike unless they are identified on the Strike Action Screen as not striking. Identifying the union members who are **not** striking ensures they are paid as usual and reduces the administrative burden on schools. Because it is not reasonably practicable to stop the pay of the teachers and principals who strike, they will be overpaid by one day's pay in the pay period in which the strike occurs. Accordingly, EdPay will automatically recover those overpayments from all staff who do strike unless they are identified in the Strike Action Screen as not being on strike.

The Strike Action Screen must be completed (**even if there are no changes**) and submitted ideally on the day of the strike, but no later than <u>5pm on the first working day after the strike</u>. If the principal is on strike, the principal will be expected to complete the Strike Action Screen the day after the strike, no later than 5pm on 17 March. The Strike Action Screen must also be printed out and signed by the principal, then archived in the school's official records. **NB: it is very important that schools do not send Edpay the signed versions, or pdfs as these cannot readily be processed.** 

The Strike Action Screen will identify all those who are a union member, however, it will not distinguish whether they are a member of NZEI or PPTA.

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

In the Strike Action Screen, list the hours that union-member part-time teachers who are striking would have usually worked on the strike day, including non-contact time. This ensures that they will only have pay recovered for the strike's duration. If the part-time

<sup>&</sup>lt;sup>6</sup> Telephone EdPay **0508 668 6729** if you are unsure who this is for your school.

<sup>&</sup>lt;sup>7</sup> Education and Training Act 2020, section 590.

<sup>&</sup>lt;sup>8</sup> Education and Training Act 2020, section 590.

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 0.9 FTTE. A full day is 8 hours some of which will be teaching and some noncontact time. 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 Thursday. A part-time teacher:

- doesn't work on a Thursday. Insert "0" in the part-time hours column of the Strike Action Screen
- works on a Thursday from 1:30pm to 3:00pm, i.e. 1.5 hours. Insert "1.5" in the part-time hours column of the Strike Action Screen
- works on a Thursday from 9am to 12noon, i.e. 3 hours. Insert "3" in the part-time hours column of the Strike Action Screen
- works a full day. Insert "8" in the part-time hours column of the Strike Action Screen.

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

If a part-time teacher is covered by the strike notice they will be listed in the Strike Action Screen, 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 Screen that they did **not** participate in the strike by inserting "0" in the part-time hours column of the Strike Action Screen.

# (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 in the screen sent by EdPay. 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, submit a EP31 form with a subject of *Strike Relievers* listing their names and MOE #. 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) under section 98 of the Employment Relations Act 2000.

# 2.3 Print, sign and archive a hard copy of the Strike Action Screen after electronically completing the Strike Action Screen process

On the day of the strike, or by 5pm the next working day, the EdPay Strike Action Screen needs to be completed electronically. A hard copy must be printed out and signed by the principal or Board Presiding Member and archived in the board's official records. Please **do not** send the signed version, or pdfs as these cannot readily be processed. Any PDF's will be returned to the school.

#### 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 EdPay in the normal way for leave. They won't be paid and the Principal will need to address it with the employee after the strike. Contact NZSTA for advice.

### 2.5 Communicate with non-striking union members

Notify each union member who did **not** participate in the strike (e.g., for reasons such as sickness or other leave) that they are recorded on the non-participation list and will be paid as normal.<sup>9</sup>

<sup>&</sup>lt;sup>9</sup> Education and Training Act 2020, section 590(1).

## 2.6 Communicate with striking union members about recovery of overpayments

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 recovered<sup>10</sup>.
- EdPay will recover the overpayment within two months of the notice.

#### 3. Further information about strikes

### 3.1 Expectations for student safety, supervision, and school closures

(a) During a strike, staffing will be reduced. The health and safety of students 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 students at home.

A strike closure should be a last resort. Some caregivers may struggle to keep students home during school hours. For health and safety reasons, the Secretary expects schools to supervise students who do attend. Supervision can be given by:

- a principal who is not a member of NZEI or PPTA, non-union 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).
- support staff, under supervision from a teacher, who normally interact with students.
- (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. NZEI and PPTA member teachers and principals will be on strike; non-union teachers will not. No support staff will be on strike.
- (c) Some schools whose teachers are all union members may not be able to access local relievers. If it is not feasible to have staff at school to supervise students under 14 years of age 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 those students.
- (d) The Education and Training Act 2020 doesn't allow school boards to close part of a school (e.g., teaching year 7 and 8 classes only).
- (e) Strike closures can't be implemented under section 659 Education and Training Act 2020. That only covers epidemic, fire, flood, or other natural disasters.
- (f) Once a decision is made by the board, the local Te Mahau office must be advised of the decision.

## 3.2 Union members who are on leave

Union members covered by the strike notice will be deemed to be on strike unless you inform EdPay otherwise<sup>12</sup>. The school must let the Ministry of Education know, through EdPay's Strike Action Screen, if any union members were on leave (sick or otherwise) rather than on strike (see para 2.2).

<sup>&</sup>lt;sup>10</sup> The overpayment is recovered under section 6 Wages Protection Act 1983.

<sup>&</sup>lt;sup>11</sup> 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.

<sup>&</sup>lt;sup>12</sup> Education and Training Act 2020, sections 589 and 590.

#### 3.3 Strike Exemptions for schools in the Hawke's Bay and Tairāwhiti affected by Cyclone Gabrielle

#### For NZEI-Members:

NZEI has told the Ministry it will grant strike exemptions for schools affected by Cyclone Gabrielle. NZEI will notify schools in the Hawke's Bay and Tairāwhiti of the process for informing them and the Ministry of exemption requests. NZEI will then provide information directly to the Ministry about which schools are exempt from the strike. It is expected that exempt schools will maintain usual operations and all staff will be paid as usual.

#### **For PPTA-Members**

At publication, we have not received information from PPTA about whether there will be strike exemptions for teachers in relation to cyclone affected schools. Affected schools can direct any inquiries to PPTA.

#### 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<sup>13</sup>. The board won't need to make up the shortfall of half days even if it closes but provides supervision.

## 3.5 What to do with the unused staffing entitlement

A teacher strike creates an unused staffing entitlement which school 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, collating the information supplied by boards on the Strike Action Screen (see para 2.2 of this guidance). 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 in relation to strikes and industrial action contact the NZSTA Advisory and Support Centre or your local Te Mahau office. See Appendix B for Ministry of Education and NZSTA contact details.

#### 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, immediately notify:

- Ministry of Education Employment Relations
- 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 Public Service Commissioner, the costs or damages were due to board conduct which was engaged in without reasonable care or was not in good faith.

<sup>&</sup>lt;sup>13</sup> Regulation 5(4) of the Education (When State Schools Must Be Open) Regulations 2022.

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

**Dear Parents and Caregivers** 

Industrial Action –Teachers' and Principals' Strike on 16 March 2023.

The NZEI and PPTA have advised the |school name|Board that its member principal and teachers at our school will be taking strike action on 16 March 2023.

The Board has carefully considered the availability of non-union teaching staff, and unfortunately decided that we can't provide normal instruction during the strike so the school will officially be closed for instruction on then day of the strike. Accordingly, it's important that you make alternative arrangements for the care of your child/children under 14 years of age during the period of the strike as no supervision can be provided. [Delete last sentence if closed for instruction but providing supervision]

If making alternative arrangements for care 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 this paragraph if no supervision can be provided]

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

We know that this is inconvenient for parents and students alike. Please be assured that student safety is our main concern.

Thank you for your understanding. Please contact [Principal's contact details (if principal is not an NZEI or PPTA member)/Presiding Member's contact details (if principal is an NZEI or PPTA member)] if you have any queries relating to this decision.

Yours sincerely

Board Presiding Member, on behalf of the |school name|Board

## **Appendix B: 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)**

- Advisory and Support Centre 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 Te Mahau office:

- Tai Tokerau: enquiries.whangarei@education.govt.nz
- Auckland: enquiries.auckland@education.govt.nz
- Waikato: <a href="mailton@education.govt.nz">enquiries.hamilton@education.govt.nz</a>
- Bay of Plenty, Waiariki: <a href="mailto:enquiries.BoP-Waiariki@education.govt.nz">enquiries.BoP-Waiariki@education.govt.nz</a>
- Hawke's Bay, Tairāwhiti: enquiries. HBTairawhiti@education.govt.nz
- Taranaki, Whanganui, Manawatu: enquiries.whanganui@education.govt.nz
- Wellington: enquiries.lowerhutt@education.govt.nz
- Nelson, Marlborough, West Coast: <a href="mailto:enquiries.nelson@education.govt.nz">enquiries.nelson@education.govt.nz</a>
- Canterbury, Chatham Islands: enquiries.christchurch@education.govt.nz
- Otago, Southland: <a href="mailto:enquiries.dunedin@education.govt.nz">enquiries.dunedin@education.govt.nz</a>

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

MINISTRY OF EDUCATION					
<b>Employment Relations</b>	EdPay				
• Email:	<ul> <li>Email: information@edpay.co.nz</li> </ul>				
employment.relations@education.govt.nz					

Appendix C: Categories of employees affected by different strike scenarios

	School open for instruction during strike	School closed for instruction during strike	School closed for instruction during strike but offering supervision
Principal (non-union member)	Not covered by strike:     On duty, paid as usual.	<ul> <li>Not covered by strike:         On duty, unless board directs otherwise: paid as usual.     </li> </ul>	<ul> <li>Not covered by strike:         On duty, unless board directs otherwise; paid as usual.     </li> </ul>
Principal (union member)	<ul><li>Not expected to attend.</li><li>Will not be paid*</li></ul>	<ul><li>Not expected to attend.</li><li>Will not be paid*</li></ul>	<ul><li>Not expected to attend.</li><li>Will not be paid*</li></ul>
Teacher union member (includes a part time teacher if they would normally be scheduled to be at work)	<ul><li>Not expected to attend.</li><li>Will not be paid*</li></ul>	<ul><li>Not expected to attend.</li><li>Will not be paid*</li></ul>	<ul><li>Not expected to attend.</li><li>Will not be paid*</li></ul>
Teacher non-union member	<ul> <li>Expected to attend.</li> <li>Will be paid as usual.</li> </ul>	<ul> <li>If the school is closed and it is a day non-union members would ordinarily work, they may be asked to attend but cannot be required to do so.</li> <li>Will be paid as usual regardless of whether they choose to come to work or not.</li> </ul>	<ul> <li>Non-union teachers may provide supervision for reasons of health and safety but cannot be required to do so.</li> <li>Will be paid as usual regardless of whether they choose to come to work or not.</li> </ul>
Reliever teacher (union member)	Not expected to attend.     Will not be noted.	Not expected to attend.	Not expected to attend.
Reliever teacher (non- union)	Will not be paid.     Already scheduled day relievers (i.e. who were booked before the results of the strike ballot were announced), who aren't union members and therefore aren't striking can still teach if the school remains open for instruction.	Will not be paid.      Not expected to attend (because no students).      If booked prior to strike ballot, should be paid, should not be booked after the strike ballot unless school offering supervision (see next cell).	Will not be paid.     If the school is closed for instruction but is offering supervision a day reliever can be used to supervise children for health and safety reasons (see clause 1.3 of the Joint Guidelines) and will be paid.
Support staff	<ul> <li>Expected to attend.</li> <li>Will be paid as usual.</li> </ul>	<ul> <li>Expected to attend.</li> <li>Will be paid as usual.</li> </ul>	<ul> <li>Expected to attend.</li> <li>Any support staff whose role normally involves supervision of students e.g. teacher aides, may be involved in providing supervision for reasons of health and safety; other support staff will be expected to undertake normal duties.</li> <li>Will be paid as usual.</li> </ul>

<sup>\*</sup>Unless the Board indicates on the Strike Action Screen submitted to EdPay that the union member did not participate in the strike e.g. due to being on sick leave or bereavement leave.