

TEACHERS' INDUSTRIAL ACTION: 24 APRIL 2008

1. Members of the NUT have voted for a national strike in response to the School Teachers' Review Body's recommended pay increases for school teachers. The proposed pay deal would see an increase of 2.45 per cent in September 2008 followed by increases of 2.3 per cent in 2009 and 2010. The industrial action will be for one day and will take place on Thursday, 24 April 2008.
2. The NUT says that teachers' salaries should be higher to keep pace with inflation and that they are not keeping up with those of other graduate professions.
3. The other teacher trade unions did not ballot for industrial action. Staff from unions other than the NUT will be expected to attend for work on 24 April. Heads will need to consider the resources available to them on the day of the strike.
4. The following guidance is based on experience of legal tests on employer responses to action to date. More detail can be found on the LGE website at: <http://www.lge.gov.uk/lge/core/page.do?pageld=119711>

Responsibility for deductions from salary

5. It is not clear whether the responsibility for responding to action lies with governing bodies in community schools or LAs as employers. Legislation is unclear, but in the case of strike action, the issue of responsibility should not inhibit employers from making deductions from salary.
6. Failure to respond to strike action would be difficult to justify in terms of the LA's fiduciary duty, which would seem to rule out paying for non-attendance. LAs will want to advise governing bodies of foundation and aided schools of the LA policy.

On what basis should deductions for a day's stoppage be made?

7. Section 3, paragraph 3.2 of the 'Burgundy Book' specifies a deduction of 1/365 for unpaid leave of absence, giving industrial action as an example of when a 1/365 deduction might be made. This was confirmed in the case of *Smith v Kent County Council [2004] EWHC 412*
<http://www.bailii.org/ew/cases/EWHC/QB/2004/412.html>
8. In planning a strategy to respond to any industrial action, LAs will need to take account of a number of factors:

- whether particular responses will be taken as a precedent for any subsequent action, by any union;
 - whether local responses can deter or reduce the effect of any action;
 - ensuring that responses do not lead to avoidable escalation
9. In terms of minimum requirements, deductions for the day's strike action should be an expected response. Teachers will need to be notified that their strike action is regarded as a breach of contract and that deductions will be taken from salary. With strike action it is difficult to see a justification for notification to teachers on an individual basis.
10. Staff who refuse to cross "picket lines" where they have not been balloted are likely to be regarded as taking unofficial industrial action. There are a number of legal consequences for such action, which is why unions tend to advise against such action. Where it is known that non-attendance is in support of the action, the simplest solution would be to deduct from pay.
11. Staff who refuse to undertake duties performed by striking colleagues might be viewed as having refused a reasonable request. However, we are aware that the other teacher and support staff unions are advising their members not to undertake cover for striking colleagues. Consequently, unless staff volunteer to undertake additional duties, pressing the point is likely to lead to further problems.
12. LAs will want to assist schools in dealing with the practical effects of this action in so far as they can. Governing bodies and head teachers should be encouraged to keep schools open to try to maintain continuity of educational provision, taking into account health and safety requirements.