

INDUSTRIAL RELATIONS COMMISSION OF NEWSOUTH WALES  
CORAM: Schmidt J 22 September 2006  
Matter No IRC 3121 of 2006

**Notification under section 130 by NSW Department of Education and Training of a dispute with New South Wales Teachers Federation re student reports ban**

DIRECTION

1. On 15 September, I made a recommendation about the removal of certain bans implemented by teachers employed by the Department, who are members of the Federation. The bans were placed on a new reporting system due to be implemented in Schools in Term 4, 2006. The new system was first announced by the Department in February this year. The bans resulted from the adoption of a resolution that teachers 'cannot and will not implement the government's unacceptable reporting requirements'.

2. On 19 September, the Federation reported that its Council had rejected the recommendation and 'had unanimously decided to continue the campaign:

"Council believes that further negotiations could produce an acceptable student reporting framework for optional implementation in 2006 and mandatory implementation in 2007. The Federation remains ready and willing to engage in negotiation to reach such an outcome. However, at this time of year, with no negotiated settlement, no DET software and no adequate or real professional development available, many, if not most, schools will find implementation not only educationally unsound, but logistically impossible. Accordingly, Council resolves to maintain its professional advice and direction to schools.'  
If appropriate, Executive is also authorised to place a ban early Term 4.'

3. The parties had further discussions after the adoption of this resolution, but they failed to produce an agreed way forward and on 21 September, the Department asked the Commission to make a direction in similar terms to the recommendation earlier made, as to the removal of the bans. The Federation opposed any direction being made and sought an adjournment of the conciliation, so that legal representation could be arranged.

4. I directed the parties to confer again, but no agreement emerged. Today the Department has again pressed the making of a direction.

5. The Federation opposed that course, arguing that it was an inappropriate one in the circumstances; that it was inconsistent with the provisions of the Act; that there was no certainty that there was in fact any ban, because the software to be implemented was not yet available to be used by teachers and because the Department's directions were not reasonable, even if lawful.

6. As I observed in the Recommendation of 15 September, the reporting requirements which the Department introduced in February, resulted from a nationwide, Commonwealth Government initiative. The funding agreement which the State has entered, requires the State to commit to the provisions of such reports to students. The bans which the members of the Federation have imposed, put in jeopardy the funding of Government schools in this State and hence the resolution of this dispute is a matter of significant public

interest, as well as of interest to the Department, the Federation, the teachers employed in Government schools and the students who attend them.

7. It is very apparent that a way must be found by which this dispute can be resolved. The Federation has not challenged the observations made in the earlier Recommendation that 'the professional teachers whom the Department employs have the capacity to produce the reports required' and that 'some schools already have such reporting systems in place and will have no difficulty in adhering to the Department's requirements and would wish to comply with the direction it has given.'

8. It follows that the arguments which have been advanced, that the requirement to implement the new reporting system does not amount to a reasonable direction, is not one which can be accepted. Undoubtedly, the advice which the Department has given as to the detail of what will be required of teachers under the new system has altered over the course of the year, as the Department has sought to resolve differences of opinion between itself and the Commonwealth Government, about the system which has to be introduced. In many respects, concerns which the Federation has expressed about the new system were shared by the Department and were taken up by it, in the discussions it pursued. I am far from satisfied however, that any position of confusion has resulted.

9. There remains, as I earlier observed, strongly held, divergent views, about the educational wisdom of the approach being introduced, especially in the early years of schooling. That situation is not, however, an unusual one. In a profession such as teaching, such professional disagreements no doubt arise from time to time. When they cannot be resolved in discussion, as in this case, undoubtedly the Department is obliged to come to a view and to implement an approach, even if teachers it employs do not always agree with the decision made.

10. Of greater concern is teachers' ability at some schools to implement the reports required in Term 4, because of the time at which the new software is to become available. It has been trialled throughout the year and modified to correct problems which have emerged. The Department understands those problems have been resolved and that the software will be available to schools by 16 October, with sufficient backup and support to ensure that the required reports can be produced in the timeframe required.

11. For its part the Federation does not expect that this is what will occur. There is, of course a possibility that it may be proven correct, but the difficulty lies in the effect of the resolution which has been adopted in the meantime. The effect of the bans imposed is that whether or not the software enables the reports to be produced and irrespective of their ability to do so, some teachers have resolved that they will not attempt to produce the required reports.

12. Given the consequences of that approach for the funding of Government schools in this state, if it is persisted with, I am satisfied that the approach adopted cannot be supported by this Commission.

13. I am satisfied that it is both lawful and reasonable for the Department to require teachers to produce reports in the form required. If, as they fear, the software does not enable that to occur, then, of course, the result will no doubt be that reports will have to be provided in a different way and the Department will have to deal with the consequences of that software failure. That possibility however, does not properly leave open the maintenance of the current ban, which involves a complete refusal to even attempt what has been required.

14. It is in those circumstances, that I propose to exercise the Commission's discretion to direct the removal of the ban and to require the parties to continue their discussions about certain matters which still lie between them.

15. The Federation, for its part, complains that the Department has not been willing to reveal to its Council and teachers, the details of the matters discussed so fruitfully in the early conciliation proceedings before the Commission about those matters.

16. The Department has indicated a willingness to reconsider that approach, at least so far as the Council is concerned, but opposes any requirement that it reveal stances taken in the past, during the course of the negotiations.

17. In order to ensure that teachers have some practical information to hand, when the direction is considered, I also directed the parties to confer as to information which could sensibly be provided to teachers, which could accompany this direction, as to what will be required of them in Term 4, as to the reports in question; the software and the training and support to be provided with its implementation.

18. The parties reported that while there was no agreement about these matters, the Department next week would confirm to teachers that:

1. Reports would be required in all key learning areas in all years, including Years 1 and 2, but not kindergarten

2. Software will be available in schools from 16 October. It has also been tested on Macintosh based systems and is available on those systems.

3. It is a template based system with drop down boxes from which information can be selected.

4. Schools are not required to use that software, they can continue using other systems which they already have, to produce the reports.

5. The reports have been the subject of extensive discussions between School education directors and Principals. About 7,000 teachers and school leaders have attended DET training on the implementation of the reporting system, which has included software training.

6. The Board of Studies has provided separate training to government and non government teaching staff.

7. Software regional support teams will be trained next week. They will consist of School education directors, Consultants, School Principals and School leaders as well as Information Technology staff. They will provide direct training and support for Schools.

8. Support in preparation of reports will be provided by school education directors, regional officers and other officers, given the nature of any problems which may arise.

19. Against that background, I now direct:

1. The Union, its officers, employees and members take all steps reasonably available to them to ensure that the current industrial action which has been taken by teachers employed by the Department, in refusing to implement the Department's new reporting requirements, be removed as soon as possible.

2. The teachers employed by the Department cease and refrain from any industrial action in connection with the implementation of the Department's new reporting requirements.

3. That the Department provide to the Federation a document setting out its current position about the introduction of the new reporting requirements, which has been the subject of ongoing discussions.

4. That the parties resume their discussions on Monday, 25 September 2006. To be included on the agenda is the question of nomenclature, discussed in the Recommendation of 15 September at [16] to [17].

20. The matter has been listed for report before the Commission at 9.30 am on Tuesday, 26 September 2006. The parties have liberty to approach on short notice if further assistance is sought in the meantime.