

Your ref:

Our ref: PY/ Industrial action 06052015

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Dear Colleague

Guidance for Governing Bodies

Notice of Escalation of Industrial Action by NASUWT

The purpose of this letter is to inform governing bodies of the continuing Industrial Action (trade dispute) between the NASUWT and the Secretary of State, over adverse changes to pensions, workload, and conditions of service, including pay and pay progressions and job loss. The next stage of this Industrial Action will include; NASUWT members taking part in continuous action short of a strike commencing the 6th May 2015. The Local Authority (LA) is **not** a party to this dispute and therefore will not make decisions on this matter, but will offer support and advice to schools, as well as liaising closely with the Professional Association involved.

The form which this additional form of continuous action short of strike action will take is as follows:

Members are instructed to refuse to comply with any marking and assessment policy which generates excessive workload and/or had not been agreed with the NASUWT.

Until such time as a policy agreed with the NASUWT is introduced, members will mark and assess pupils in a manner consistent with the principles set out in the Union’s guidance.

Further information available at

http://www.naswt.org.uk/TrainingEventsandPublications/NASUWTPublications/AccessiblePublications/Education/PositionStatement-TestingandAssessment/NASUWT_005833

What is industrial action?

There is no legal definition of industrial action. However, case law has established that:

- Industrial action must be concerted action against the employer's interests. It does not, therefore, usually cover action taken by an individual
- It must be taken in order to put pressure on the employer in an attempt to achieve some objective.

When are employees taking part in Industrial Action?

As a basic guide, employees will probably be taking part in Industrial action if they:

- Collectively withdraw their labour
- Refuse to undertake some of their duties
- Refuse to carry out reasonable instructions
- Take part in a sit-in, go-slow or work to rule
- Take part in picketing

As a governing body you should discuss the issue with your headteacher to determine if the proposed action is likely to occur in your school. The LA strongly encourages governing bodies and headteachers to keep schools open to maintain continuity of educational provision, taking into account health and safety requirements.

Should governors and headteachers feel it necessary to close their school, parents must be informed and the school should follow the usual 'Unavoidable School Closure Procedures'. This includes notifying the Director's Office of full or partial closures to marion.sadler@northyorks.gov.uk.

It is expected that, under existing trade union legislation, the other trade unions/ teacher associations who are not a party to the dispute will be advising their members not to undertake the duties of their colleagues who would be involved in the industrial action. However staff who are not members of the NASWT, will be expected to attend work, even if the decision to close the school has been made.

What should Governors do if staff take industrial action?

If your school is affected because members of staff, who are members of the NASWT propose to take action, the National Employers' Organisation for School Teachers (NEOST) and the LA advise that:

- Any action which individual members of staff take as a result of this dispute will result in them failing to fulfil the terms of their contracts of employment. Governing bodies should respond to such

a breach of contract both in word and action. It is important that, whatever their individual or collective views on the issues concerned, governing bodies are not seen to be complicit in the industrial action being taken by the NASUWT.

- Firstly, the governing body need to inform members of staff who propose to take action, in writing, that any refusal to undertake their contracts of employment is regarded as a breach of contract and a deduction of wages on account of the breach of contract will be made. (Sample letter A attached. is to be used for Discontinuous strike action.) Under no circumstances should deductions be viewed or presented as a penalty for taking industrial action.
- Governing bodies should also take into consideration that it is unlikely that other members of staff who are not members of the NASUWT will be prepared to undertake the work that those taking action would have undertaken. Regulation 7 of the Conduct of Employment Agencies and Employment Business Regulations 2003 makes it unlawful for agencies to supply or introduce work seekers to replace employees who are undertaking official industrial action if the agency is aware of the action. Therefore it is **not** advisable for governing bodies to seek to engage the services of employment agencies at this time.
- Where picketing takes place, employees not directly involved in the industrial action may refuse to cross picket lines. Such employees can normally be regarded as being on strike and treated accordingly. Occasionally however, employees may be willing to cross picket lines but are reluctant to do so for fear of their safety. In such circumstances, the governing body should try and ensure that the teacher is given every protection in crossing the picket line, or where practicable, is given the opportunity to work at another establishment. If the governing body considers the teacher has made every effort to cross the picket line but was unable to do so, then the governing body may decide not to treat their absence as industrial action.

It is for each individual member of staff to decide whether or not to comply with union instructions to strike and governing bodies should assume that all union members will be participating in the strike action. However as the School/Local Authority do not hold details of which staff are members of which unions headteachers are advised to ask their staff to confirm whether or not they will be participating as soon as possible before the strike action commences. This will enable contingency plans to be put in place to adequately safeguard pupils. **It should be noted though that the staff are not required to respond to such a request.**

Deducting Pay

With industrial action, including action short of a strike, a response may be to deduct pay and governing bodies are entitled to determine that pay is withheld for work not done, providing the governing body

accepts that the breach has taken place and that they inform the employee of this and of any action that the governing body will take in response.

Where **strike action is taken for a complete day** or a number of days, the National Employers' Organisation for School Teachers (NEOST) recommendation is that a deduction of pay should be made on the basis of 1/365 for each day's action. Paragraph 3 of Section 3 of the *conditions of service for School Teachers in England and Wales* (the 'Burgundy Book') specifies this rate of deduction for unpaid leave of absence, giving industrial action as an example.

For Industrial action short of a strike or '**partial performance**' of duties an employer is entitled to refuse to accept the partial performance of the contract of employment offered by employees. This would mean informing employees that they should only attend work when they are prepared to work in full compliance with their contracts. Until they do so they will have no entitlement to pay.

Despite the legal entitlement to deduct all pay in the instances of partial performance governing bodies may prefer to allow employees to continue to work during industrial action short of a strike, in the interests of continuing to provide education to the students at the school, and instead inform employees that a proportion of pay, to reflect the work that is not being undertaken will be deducted from their pay. If the governing body contemplates deducting a proportion of pay, I or my colleagues in HR would be pleased to advise further in the individual circumstances of the school concerned.

If the decision of the governing body is to follow NEOST's and LA's advice then the attached deduction form - Appendix B should be completed and returned to employmentsupportservice@northyorks.gov.uk

Voluntary Aided, Foundation Schools and Academies

In voluntary aided schools and foundation schools, of course, the responsibility for deciding responses to industrial action lies with the governing bodies as the direct employers of staff, although they may want to take into account the advice above relating to community schools. For Academies the employer is the Academy Trust itself.

The Local Authority is working closely with the Professional Associations concerned and if any employees require guidance then we recommend that they contact their own trade union/Professional Association.

If your school is to be affected then the governing body and headteacher should also ensure that parents are fully informed of the facts.

I trust this information is useful to you but should you require further guidance, for HR guidance please contact penny.yeadon@northyorks.gov.uk telephone 01609 533302 or for governors advice please contact alison.johnston@northyorks.gov.uk telephone: 01609 532160.

We have also produced a 'Frequently Asked Questions' fact sheet and this will be updated as issues arise and can be located on the Schools Staff Information site at www.northyorks.gov.uk/schoolshr.

Enclosures:

Appendix A – Sample letter for staff participating in continuous action short of strike action

Appendix B – Deduction Form

Appendix C – Note for school staff

Further external advice and guidance is available at the www.education.gov.uk and www.lge.gov.uk.

Yours sincerely,

A handwritten signature in purple ink that reads "Penny Yeadon". The signature is written in a cursive style with a large initial 'P'.

Penny Yeadon MCIPD
Head HR – CYPS

Cc: Head teachers