NewsExtra

CATHOLIC SYSTEMIC SCHOOLS | JULY 2017

IEU CALLS FOR PROTECTED ACTION

The Union has not been able to reach agreement with the Catholic Commission of Employment Relations (CCER) concerning the new enterprise agreement (EA) to apply to NSW and ACT Catholic systemic schools.

Although there has been progress in the negotiations, as at the time of writing, there are still major outstanding issues.

As a result, the Union is calling for protected action in support of separate enterprise agreements for each Diocese.

What is outstanding?

The key outstanding issue is the Union's desire to protect the long-standing right of the Union and our members to refer disputes to the Fair Work Commission for conciliation and, if required, as a last resort, arbitration. We have also not reached agreement on members' rights of access to files concerning allegations of reportable conduct.

The employers are arguing that the Fair Work Commission should not be able to arbitrate a dispute about the EA or a work practice agreement where conciliation by the Fair Work Commission has not resolved the dispute. This means that in a practical sense many conditions in the EA and work practice agreements are unenforceable.

What are the employers saying about this?

They say:
They want to keep the current clause because it works well.

We say:
Until 2017, the employers had agreed there was a right of arbitration under the current clause. In 2010, CCER said *"the employers have agreed that disputes about the content of an enterprise agreement and/or work practice agreement may be arbitrated by Fair Work Australia"*.
Now they and the Fair Work Commission interpret the clause differently. CCER now says there is no right of arbitration under the clause.

They say:
The current clause has resolved every dispute notified.

We say:
Yes but not by conciliation only. We successfully arbitrated a dispute on behalf of Three Year Trained teachers in the ACT and have settled other disputes after conciliation failed - the employer settled only when we said we were proceeding to arbitration.

They say:
Arbitration would encourage expensive legal processes with lawyers.

We say:
The one dispute that went to arbitration did not involve lawyers at all and there was no expense. It's the employers' choice whether or not they use lawyers but that is no reason for us to give up members' rights.

Work practice agreements for teachers

Work practice agreements contain conditions such as:

- maximum face to face teaching and extras in secondary schools
- guaranteed 120 minutes per week of RFF in primary schools
- class size limits
- meeting times in primary and secondary schools and
- support for teachers seeking Proficient status.

It is essential that these agreements can be enforced by the Union for members.

What has been agreed in the EA negotiations?

- pay increases
- improved recognition of service for teachers (employers have agreed in principle only)
- pre 2014 teachers - an adjustment to the incremental step of pre 2014 teachers to ensure they are not being paid less than a teacher on the Standards pay scale with the same years of teaching service (employers have agreed in principle only)
- in most dioceses, improvements to the work practice agreements.

Next steps

We have consistently advised CCER that arbitration of disputes is a key issue in resolution of the enterprise agreement. It is unfortunate that there is continuing delay in settling all the matters outstanding in the enterprise agreement negotiations as this is delaying pay increases for members.

Members are requested to meet to endorse a ballot in your school to authorise protected industrial action. At this stage we envisage a two hour stopwork later in this term but will seek support for a range of actions.

Chapter Motion

This Chapter _____ (name of school) at _____ (town/suburb)

supports the Union's claim that the Fair Work Commission should be able to resolve disputes about the enterprise agreement or work practice agreements containing our working conditions. These conditions must be enforceable.

We express our dismay about the delay in pay rises for teachers and support staff.

We request the Union to commence the steps to take protected industrial action to resolve all issues in dispute and to reach an acceptable enterprise agreement for our diocese.

☐ FOR ☐ AGAINST

Date of the meeting: _____

Any further comments: _____

_____

_____

Please return this motion to the Union at ieu@ieu.asn.au or fax to 9211 1455 TF 1800 804 042 as soon as possible and no later than Monday 31 July.

Independent Education Union of Australia NSW/ACT Branch

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THE FACTS ABOUT ARBITRATION

What is the history of dispute clauses?

Historically under the state system that applied prior to 2010, the Union was able to refer a dispute about any industrial matter to the Industrial Relations Commission. Following conciliation, the Industrial Relations Commission could arbitrate (that is, make a binding decision) on the dispute.

In 2010, as part of the transition to the federal system, the employers initially tried to remove the right of arbitration. CCER then said *"the employers have agreed that disputes about the content of an enterprise agreement and/ or work practice agreement may be arbitrated by Fair Work Australia"*. In 2014, they again sought to limit the operation of the disputes procedure clause and remove the right of arbitration by the Fair Work Commission unless the employer agreed. However, as part of the settlement in June 2015, they dropped their demand for employer consent to arbitration.

CCER has now stated however that there is no right of arbitration under the existing EA clause. A recent Full Bench decision of the Fair Work Commission, on 1 June 2017, has also created some doubt about the interpretation of our clause.

The Union is seeking to put this matter beyond doubt to ensure that the Fair Work Commission can resolve a dispute by arbitration whether or not the employer agrees. This would always follow mediation and conciliation.

Why is arbitration so important?

The Union has sought to include a right of arbitration in the EA as we consider it is the quickest, fairest and most cost-effective way to resolve a dispute, where conciliation has failed and the parties are unable to agree.

It is also the Union's experience that conciliation by the Fair Work Commission will not resolve a dispute unless there is a right of arbitration. If there is no possibility of arbitration, some members of the Fair Work Commission will refuse to make recommendations (as they are unenforceable) and employers will refuse to follow recommendations even if they are made.

We consider conciliation has been effective in relation to disputes in Catholic schools, because the Commission COULD arbitrate if the matter was not resolved.

Examples of disputes that can be referred to the Commission include:

- classifications for teachers and support staff
- requirements by schools for teachers or support staff to undertake PD outside school hours
- the rate of pay for casual teachers
- attendance during school holiday periods for teachers or support staff
- lunch breaks
- performance management processes
- coordinator appointments
- right to work part-time etc.

All of these matters are real examples of disputes that have been referred to the Commission by the Union on behalf of members in Catholic schools. Disputes relating to work practices can also be referred as disputes.

Until very recently, employers have not disputed there is a right of arbitration under the EA. This claim has only arisen in recent months and was first made by the Archdiocese of Canberra and Goulburn when they tried to force ACT teachers to work an extra day compared with their ACT government school colleagues. This case did not settle at conciliation - the employer only backed down because the timing of the hearing would have been after the disputed holiday period. The 2016 casual teacher pay dispute is another example when the matter did not settle at conciliation - the matter only settled when the Union advised we would proceed to arbitrate the dispute.