

Arbitration between ACT Department of Education and Training and the Australian Education Union

Summary of Reasons for Decision and Award

Arbitrator: Dr Iain Ross AO

12 January 2007

- 1 The AEU and the Department have been negotiating a new collective Agreement. Agreement has been reached on most, but not all, matters.
- 2 On 31 October 2006, the parties agreed to participate in private arbitration to resolve the Outstanding Matters. I was appointed as the arbitrator. The agreed terms of reference for the arbitration are as follows:
 - (i) *Dr Ross is asked to determine through private arbitration an appropriate pay rate (or rates) for three years of government school teachers employed in the ACT.
This determination is to be based on consideration of the proposal by the Department for increases in pay rates of 3% per annum and the proposal of the AEU for increases in pay rates of 4% per annum.
The parties seek that Dr Ross determine an appropriate pay rate (or pay rates) at or within these two proposals.*
 - (ii) *Dr Ross is asked to determine whether it is appropriate that a collective agreement between the parties set a maximum cap on face to face teaching hours for secondary teachers in high schools and colleges.*

(iii) *If the answer to (2) is yes, Dr Ross is asked to determine what if anything is an appropriate maximum cap on face to face teaching hours for secondary teachers in high schools and colleges.*

3 The arbitration was conducted between 19 and 22 December 2006 in accordance with the procedure agreed between the parties. The agreed procedure placed a limitation on the number of witnesses to be called by each party and on the duration of any cross-examination.

4 The Terms of Reference set out the issues for determination.

5 In relation to rates of pay the parties have agreed that the date of effect of the first pay increase will be no earlier than the first pay period commencing on or after 1 December 2006. The parties have also agreed that the nominal expiry date of the proposed agreement will be 30 June 2009.

6 The Department purposes 3 increases, each of 3% over the life of the Agreement. The AEU seeks 3 increases, each of 4%.

7 In respect of face to face teaching hours, AEU's position is that the proposed Agreement should contain a maximum cap on face to face teaching hours of 18 hours per week. The Department's position is that there should be no such cap in the proposed Agreement, but if I determine otherwise, any cap should be set at a maximum of 22 hours and 40 minutes per week

8 The parties have agreed to accept my determination in relation to the Outstanding Matters (without recourse to appeal) and to:

(a) prepare a union collective agreement which expires on 30 June 2009 which gives effect to the matters already agreed between the parties and Dr Ross' determination which is capable of being lodged under the Workplace Relations Act 1996 (**WR Act**);

(b) *prepare any other instrument or document required to give effect to the determination of Dr Ross; and*

(c) *support the union collective agreement, and actively promote its acceptance by employees who will be covered by it.*

9 The primary area of contention between the parties is about teacher workload in the ACT relative to teachers in other jurisdictions. The AEU argued that

teachers in the ACT were in a unique position and, as a result, had an increased workload comparative to their peers in other jurisdictions. This increased workload is said to justify the imposition of a maximum teaching hours of 18 hours per week was part of the justification for a salary increase of 4% per annum.

10 I do not doubt that the vast majority of teachers in the ACT are committed to their profession and work hard. However, I am not persuaded that the workload of teachers in the ACT is significantly greater than that of teachers in other States and Territories.

11 The success of the ACT Government system supports the conclusion that teachers in the ACT are adequately supported and not overworked. It is improbable that an education system can function effectively if it is not being properly resourced and its teachers are being overworked.

12 It was accepted by the AEU the ACT Government system is recognised in terms of international testing regimes as delivering world's best practice in many areas. In his evidence Mr Haggart accepted that the ACT education system generated the best education outcomes of any education system in the country and that it is hard to achieve world's best practice if the system is not properly resourced.

13 I now turn to consider the issues for determination.

14 In terms of appropriate pay rates I have decided that the proposed agreement shall incorporate the following increases:

Pay Increase	Operative Date
First Pay Period on	
4%	1 December 2006
4%	1 July 2007
3.5%	1 July 2008

15 In reaching this conclusion I have had regard to the following:

- ACT teachers have not received a wage increase since 1 July 2005;

- The increases awarded are broadly comparable to recent salary increase outcomes to teachers in other jurisdictions. Once the increases have been implemented top of the range teachers and graduate teachers will enjoy salaries which are amongst the highest in the country and significantly higher than teachers in WA, SA and Vic.
- Based on the ACT budget mid year review, the level of increase awarded will result in a real wage increase for ACT teachers in each year over the life of the agreement.
- The lower level of increase operating from 1 July 2008 reflects the fact that the CPI is expected to fall in 2007-2008.

16 I now turn to consider whether it is appropriate that the proposed agreement set a maximum cap on face to face teaching hours for secondary teachers in high schools and colleges.

17 Two particular considerations have influenced my determination of this issue.

18 The first arises from the agreed terms of reference. I am asked to determine whether it is “appropriate” to set a maximum cap in a collective agreement. Importantly I am not being asked to arbitrate in an award context or in the context of what was a s.170NX arbitration. It follows that the cases relied on by both parties are of little assistance. The matter is not to be decided on the basis of an assessment of whether or not workloads are unjust or likely to be so but whether it is “appropriate” to include this matter in a collective agreement.

19 The second issue goes to the appropriateness of including such a matter in the proposed agreement, namely the context in which this matter is being determined. As I have already noted the proposed staffing cuts are likely to lead to an increase in face to face teaching hours. If this matter is not dealt with in the proposed agreement, teachers will have no recourse in the event that their face to face hours are increased. They will be constrained in respect of the type of action they can lawfully take during the nominal term of the proposed agreement.

20 I have had regard to the Department’s argument that a cap will limit the flexibility Principals have in relation to the allocation of resources. However, the force of this argument has been significantly reduced by the Department’s own action to reduce such flexibility, namely through the CEOs Minute to

Principals dates 25 October 2006. I have sought to address the flexibility issues in the form of award I propose.

- 21 In these circumstances, and having regard to the fact that this issue is dealt with in collective agreements in other jurisdictions, I determine that it is appropriate that the proposed agreement set a maximum cap on face to face teaching hours for secondary teachers in high schools and colleges. The next issue that falls for determination is the level of the cap.
- 22 I am not persuaded that in the current circumstances a cap of 18 hours is appropriate. Such a cap would be the lowest in Australia and is now warranted of differential workloads. The AEU's argument in support of an 18 hours relies on weight of history however times change. Teaching around the country involves change. It is not a static profession. It requires a preparedness to respond to changes in education as they arise from time to time. To the extent that over the life of the proposed Agreement ACT teachers will be subject to change, they are in a no different position to teachers around the country. The evidence discloses that change has occurred across a number of states and further significant change is about to occur in Tasmania and WA.
- 23 Nor am I persuaded that a cap of 22 hours 40minutes (as sought by the Department in the event that I rejected their primary submissions that no cap should be imposed) is appropriate. The only real justification in support of such a cap was that it was the highest currently operating in Australia and would maximise flexibility. I have already made reference to the Department's flexibility argument.
- 24 The current cap in NSW may have been the most appropriate but the duration of teaching periods and the arrangements in respect of sports differ between the two jurisdictions.
- 25 In all the circumstances I have decided to set a cap of 19 hours per week averaged over the school teaching year (as proposed in the Department's draft order). I do not propose to define what is meant by face to face teaching due to the ferocity of evidence in respect of this issue. In the event that a dispute arises it should be determined having regard to the past practice in the ACT.
- 26 The cap will relate to the face to face hours that a teacher may be required to work. It will not preclude teachers from agreeing to a greater teaching load, on a voluntary basis.

- 27 In setting a cap of 19 hours I wish to make it clear that this issue should be reviewed by the parties at the end of the nominal term of the proposed Agreement in light of experience during the term of the agreement. An increase or decrease in the cap may be warranted at that time.
- 28 The Department is to prepare a draft Award giving effect to my determination and forward it to the AEU and myself by 5:00pm Monday, 15 January 2007. By 12noon on Tuesday, 16 January 2007, the AEU is to advise me as to whether it has any objections of the draft Award proposed by the Department. If no objection is made by the time specified I will issue an Award in the terms provided. If the AEU objects to the form of the Award proposed by the Department, I will hold a conference, by telephone, to settle the Award at 1:00pm on Wednesday, 17 January 2007.