



DEVON & SOMERSET FIRE & RESCUE AUTHORITY

REPORT REFERENCE NO.	HRMDC/11/7
MEETING	HUMAN RESOURCES MANAGEMENT & DEVELOPMENT COMMITTEE
DATE OF MEETING	17 JUNE 2011
SUBJECT OF REPORT	OVERVIEW OF UNION RECOGNITION ARRANGEMENTS
LEAD OFFICER	Director of People and Organisational Development
RECOMMENDATIONS	<i>That the report be noted.</i>
EXECUTIVE SUMMARY	This paper sets out to provide further background information into the collective working arrangements with Devon & Somerset Fire & Rescue Service. This includes the recognition arrangements, the facilities for the release of Union representatives and the collective arrangements.
RESOURCE IMPLICATIONS	Not applicable for the purposes of this report
EQUALITY IMPACT ASSESSMENT	None
APPENDICES	Appendix A -- Joint protocol for good Industrial Relations in the Fire & Rescue Service Appendix B -- Section 6C Local Consultation and Negotiation
LIST OF BACKGROUND PAPERS	None

1. INTRODUCTION

- 1.1 The Service is committed to joint working with the recognised trade unions for the benefit of the Service, our employees and the local communities that we serve. This paper sets out to provide further background information into the collective working arrangements within the Service. The Service currently recognises the following Unions:

Fire Brigades Union (FBU)
Retained Firefighters Union (RFU)
Fire Officers Association (FOA)
UNISON

2. RECOGNITION OF TRADE UNIONS

- 2.1 At a national level, originally the only trade union that represented employees on the National Joint Council for Local Authorities' Fire Brigades (NJC) was the FBU. The NJC are responsible for the negotiations for national pay and conditions of service which are set out in the Scheme of Condition of Service (commonly known as the Grey Book). Back in 1998 the then Grey book made no mention to the recognition of any other Union other than the FBU. Locally in Devon, when the Combined Devon Fire Authority was formed in April 1998, the recognition of the FBU and UNISON was automatically transferred from the Fire Department within Devon County Council to the Authority.
- 2.2 Prior to the formation of the Fire Authority there had been a practice of informal consultation with both the RFU and FOA. In October 1998, the Devon Fire Authority gave recognition to the RFU and FOA for consultation purposes.
- 2.3 The last (6th edition) of the NJC, Scheme of Conditions of Service issued in 2004, changed the position nationally concerning the recognition of Unions other than the FBU. The Grey book preface included the following statement:
- The NJC has a strong commitment to joint consultation and negotiation, with a view to reaching agreement, between fire and rescue authorities and recognised trade unions at all levels. To this end the NJC encourages employees to join independent, certified, recognised trade unions. The NJC believes that cooperation between employers, employees and the trade unions will help ensure successful service delivery.*
- 2.3 In April 2005, the National Employers issued a circular with a protocol for recognising the RFU and FOA at a national level for consultation purposes. This protocol was intended as an interim arrangement pending the formal inclusion of both unions within the national collective bargaining procedures. In September 2005, the Devon Authority gave full recognition to FOA and the RFU for the purposes of consultation **and negotiation** since it was considered that Retained staff and uniformed officers were not sufficiently represented at a local level.
- 2.4 When Devon FRS and Somerset FRS combined, there was no recognition arrangements within Somerset for FOA and the RFU. However, the recognition arrangements from Devon FRS were extended to the newly formed Devon & Somerset FRS.

- 2.5 In September 2007, the national constitution was modified to introduce a mechanism for minority trade union representation. This was intended to enable FOA and the RFU to be fully recognised nationally subject to a count of members within 3 months. A Middle Managers Negotiating Body (MMNB) was created to deal with issues relating to employees in Station Manager to Area Manager roles and FOA took up this national representation. FOA have 1 member on this national committee whilst the FBU have 13. The employers side has 14 representatives. At this time the RFU decided not to accept the invitation to join the NJC with the subsequent count of employee membership within the specified employee group ie Firefighters to Watch Managers.
- 2.6 During this same period the arrangements for union representation of Support Staff (non-uniformed) have also changed. Prior to 1997 there were separate national agreements for Manual and APT&C workers (Administrative, Professional, Technical and Clerical). These were combined to create a National Agreement on Pay & Conditions of Service under the NJC for Local Government Services (commonly known as the Green Book). This is a Single Status agreement and one of the requirements of the agreement was to undertake a pay review in the form of job evaluation. Nationally there are three recognised unions T&G (now known as Unite since their merger with Amicus), GMB and UNISON. Within the former Devon FRS, UNISON were recognised originally when the Service was part of DCC and this was the same in Somerset. This recognition has continued through into DSFRS. The national structure differs from that of the uniformed unions since the Service is not a branch of the union. The local UNISON branch is within DCC.

3. FACILITIES FOR THE RELEASE OF UNION OFFICIALS

- 3.1 Within the previous Devon Fire & Rescue Service the relationship between the Service and the local branch of the FBU had traditionally been adversarial. A dispute in 2001 led to referral to an ACAS mediator. As part of the mediator's report there was a recommendation that Devon FRS and the FBU should form a Joint Working Party to examine the Industrial Relations and seek to improve the working relationships.
- 3.2 A Steering Group was established including the National Joint Council Secretaries, Senior Officers of Devon FRS, Regional and Local FBU Representative and ACAS Officers. The terms of reference were agreed and a Joint Working Party established to address and review the IR matters. The completion of this work was delayed until 2004 due to the national industrial dispute that took place in relation to levels of pay and other terms & conditions of employment. The Joint Working Party established local agreements on the FBU Recognition, the Constitution of the Industrial Relations Committee, the Consultation and Negotiation Framework and the Facilities.
- 3.3 It was also recommended that a FBU representative was given full-time status as a representative. The ACAS comments at that time were as follows:

Having gained a fairly detailed understanding of the industrial relations processes and procedures within DFRS and given the likely on-going and possibly increased need for consultation and negotiation it is our view that the introduction of full-time facilities for the FBU would be of considerable benefit to the continued improvement of industrial relations. There is a considerable amount of evidence across a diverse range of organisations to support the concept of full-time facilities.

Before such facilities are introduced we feel that the following issues need to be addressed:

- *An agreed role-description of the lay-officer(s).*

- *An agreed monitoring system to enable both DFRS and FBU to clearly establish the value of the full-time facilities.*
- *A process for ensuring that any appointees receive appropriate training to retain their core skills as firefighters.*
- *Agreement on any form of appraisal for use in any future applications for promotion etc.*
- *An agreed review date to assess the need to continue and/or expand the facilities.*

- 3.4 At that time following on from the national dispute, DFRS did not consider it appropriate to consider extending such facilities. In June 2005 there was further work nationally between the National Joint Council for Local Authority Fire Brigades and the FBU which resulted in workshops for Service and FBU representatives run by ACAS. Further work was undertaken locally in Devon with the aim of creating a more positive working relationship with the FBU in order to solve collective issues. At this time the Devon Fire and Rescue Authority also agreed to the part-time release of the existing FBU Chair. This made it easier for the FBU representative to obtain leave for TU duties on a more regular basis but also maintain his Firefighter competency.
- 3.5 Prior to the combination of Devon with Somerset FRS, Devon had agreed to the full-time release of the FBU Secretary to enable him to carry out his TU duties in relation to the combination project involving Devon & Somerset. Originally it was planned that this arrangement would cease from the 31 March 2007. However, following combination the Devon and Somerset branches of the FBU also had to combine and elect a Chair and Secretary. With the continuing work on harmonisation, the full-time release was extended until April 2008.
- 3.6 During this period there was considerable discord with the FBU primarily in relation to the changes in the crewing of the Aerial Ladder Platforms. With financial constraints, the full-time release was removed and the FBU representative returned to an operational post. However, this arrangement was not sustainable due to the considerable amount of time that was required for union duties including that of discussions with the Service. Through ongoing discussions with the local and regional representatives the Service and FBU reached agreement for detaching the FBU Chair and Secretary from operational duties on a 3 month rolling basis. This temporary arrangement has been in place since May 2010 and can be withdrawn by giving a three month notice period.
- 3.7 For the RFU, the key representative was previously a retired employee of Devon FRS and no hours were paid by the Service for trade union activity. When the RFU appointed a Secretary who was an existing Retained member of staff a request was made for a number of paid hours specifically for trade union duties. The Service agreed that the RFU official's post could receive payment for up to 20 hours per week at firefighter level and this commenced from July 2008. Since December 2009, the Secretary has also been employed within both the Retained and Wholetime and has spent less time on union duties. The RFU restructured their committee in November 2010 to give better representation across the Service. At this time the Service agreed to the RFU request that the 20 hours per week could be shared between one or more representatives. Recent changes in relation to the Grey Book as a result of the national part-time workers settlement have led to representative payments being at the role level held by the official rather than a flat Firefighter level.

3.8 Within UNISON, as there is no branch within DSFRS, the representatives do not have a formal chair or secretary. However, in order to have a single contact point there is a senior convenor. The current employee within this position works within the Operational Assets Department. Due to the levels of union activity the Service has agreed that the convenor should have the equivalent of 1 day per week for union duties. This includes attendance at Industrial Relations Committees.

4. COLLECTIVE ARRANGEMENTS

- 4.1 The Service and Unions have 3 levels of operation within the Service namely Strategic, Service Wide and Area/Department. At the Area/Department level there are no formal meetings but matters that arise are dealt with locally. At the Service Wide level there are formal Industrial Relations Committees (IRCs) which are currently held bi-monthly. At the IRCs, the Service is represented by the ACFO with the lead responsibility for Industrial Relations, HR Manager and Senior HR Officer. The IRCs deal with collective matters including information sharing, negotiation and consultation. Outside of the IRC meetings there are additional informal meetings to work towards resolving matters that arise. The Strategic level is with the CFO and DCFO and are informal meetings to discuss the strategic direction of the Service.
- 4.2 Within the Grey book there is a joint protocol for good Industrial Relations in the Fire & Rescue Service and this is set out in Appendix A. The protocol sets out how the Service and Union representatives will seek to work together for the benefit of the Service, its employees and local communities. The document sets out a number of principles and explains the difference between consultation and negotiations. Negotiation relates to matters which are contractual and everything else is consultation. As part of the protocol the Service and Unions commit to only taking unilateral action as the last resort ie industrial action by the Union or imposition of change by the Service.
- 4.3 The Grey book also includes consultation and negotiation procedures under Section 6C which provide mechanisms to help the Service and Unions to resolve differences (Appendix B). These procedures require formal meetings to be held within the Service. If this does not result in a resolution then the matter can be referred to a national level. This may be to the NJC Joint Secretaries and/or ACAS and/or the NJC Resolution Advisory Panel (RAP) which comprises of an Independent Chair and the Joint Secretaries. If the matter is not resolved at this level then the matter may be referred to ACAS for settlement by arbitration. Both parties would need to jointly agree such referrals. The Service has since combination twice referred matters to the national level. The first was in relation to ADCs for Wholetime Firefighters with secondary RDS contracts and also ADCs for Fire Control staff. The second was in relation to the use of the Gartan Availability System.
- 4.4 Locally within DSFRS at the time of combination, the Service sought to modify the collective arrangements and create a single combined committee for the Service and Unions to deal with information sharing and consultation. However, this was resisted by the FBU on the basis that the RFU are not recognised nationally and not a member of the TUC. The FBU also wanted any arrangements with FOA to be equivalent to the national arrangements which would mean that they would have a reduced status within DSFRS. At this stage, for the FBU, the Service has therefore continued with the recognition agreements from the previous Devon FRS. The other unions have agreed to the modified collective arrangements with the single combined committee but without the FBU support this cannot be progressed.

4.5 As well as giving time-off for Trade Union activities, the Service also provides time-off for Safety Representatives. This is covered under a separate agreement and is subject to specific Health & Safety legislation.

5. CONCLUSION

5.1 This report provides an overview of the recognition arrangements within DSFRS, the facilities for the release of Union representatives and the collective arrangements that are currently in place.

JANE SHERLOCK
Director of People and Organisational Development

APPENDIX A TO REPORT HRMDC/11/7

Joint protocol for good Industrial Relations in the Fire & Rescue Service

NATIONAL JOINT COUNCIL FOR LOCAL AUTHORITY FIRE AND RESCUE SERVICES

'WORKING TOGETHER'

A JOINT PROTOCOL FOR GOOD INDUSTRIAL RELATIONS IN THE FIRE AND RESCUE SERVICE

The National Joint Council (NJC) recognises that Fire and Rescue Service managers and trade union representatives must work together for the benefit of the service, its employees, and local communities. To this end the principles below will apply both at national and local level.

Principles

- Joint commitment to the success of the Organisation¹.
- Joint recognition of each others legitimate interests and responsibilities.
- Joint focus on the quality of working life
- Joint commitment to operating in a transparent manner
- Joint commitment to continuously improve industrial relations
- Joint commitment to reaching agreement within appropriate timescales
- Joint commitment to ongoing dialogue and exchange of views including face-to-face meetings
- Joint commitment to a 'no surprises' culture

In support of the above principles employer representatives² will:

- Engage trade union representatives early in consultation/negotiation (as appropriate) on issues which have workforce implications
- Share full and appropriate, and timely information e.g. on finance and employment matters to trade union representatives in order to enable effective consultation or negotiation to take place
- Take on board trade union views, providing full and frank feedback on how that process has influenced their subsequent position

¹ The term "Organisation" refers to the NJC and/or local fire and rescue services, as appropriate

² The term "Employer representatives" refers to the Employers' Side of the NJC or local managers, as appropriate

- Put in place reasonable trade union facilities in accordance with statutory requirements and ACAS good practice guidance in order to support this inclusive approach

Trade union representatives will:

- Take an active and constructive part in discussion at an early stage to facilitate reaching agreement within the appropriate timescale
- Provide a considered response to proposals, including alternative options, in accordance with a locally developed timescale or those contained in the national model procedures, as appropriate
- Share with managers relevant and appropriate information to assist discussions

All parties:

- Recognise their common interests and joint purpose in furthering the aims and objectives of the Organisation and in achieving reasonable solutions
- Will behave respectfully towards each other at all times
- Accept the need for joint consultation or negotiation in securing their objectives
- Will identify at the outset the appropriate timescale for discussion
- Respect the confidential nature of the, at times, sensitive information exchanged
- Actively work together to build trust and a mutual respect for each other's roles and responsibilities
- Ensure openness, honesty and transparency in communications
- Provide top level commitment to the principles outlined in this protocol
- Take a positive and constructive approach to industrial relations
- Commit to early discussion of emerging issues and to maintaining dialogue in order to ensure a 'no surprises' culture
- Commit to ensuring high quality outcomes
- Where appropriate, seek to agree public positions

Consultation and Negotiation

To assist all parties at local level the NJC has already agreed model consultation and negotiation procedures which are contained in the Scheme of Conditions of Service (Grey Book) that promote joint solution seeking. Both procedures contain principles which all parties have agreed to adhere to.

In the case of the consultation procedure parties at local level have agreed to identify and work within an appropriate timescale. In the case of the negotiation procedure timescales are set out which should be adhered to in order to ensure timely resolution. This is equally the case where alternative timescales have been jointly agreed at local level.

Both model procedures contain definitions of the circumstances in which they are to be used. In the case of consultation, matters shall be those that do not require collective agreement. In the case of negotiation, matters shall be those that do.

The simplest explanation of the difference between consultation and negotiation is that anything which is contractual and therefore needs the agreement of the individual employee or their trade union on their behalf is negotiation. Everything else is consultation.

The standard issues referred to in a person's contract are matters which require agreement to change and are therefore negotiable. Basically this covers remuneration, hours of work, leave entitlements and any other conditions of service. It may also cover local policies and procedures not specified within the Scheme of Conditions of Service (Grey Book), or NJC circulars, where they are within the individual's contract and the contract does not provide that the employer has the right to amend them from time to time without agreement. It may also include local practices that are not contained within an individual's contract but may be implied contractual terms. Everything else is consultation.

Both processes should be conducted with a view to reaching agreement and therefore should include an opportunity to consider alternative approaches to an issue. Where agreement cannot be reached both parties will consider further options but in doing so commit to taking unilateral action only as a means of last resort i.e. industrial action or imposition of change.

Both processes allow for joint agreement to external assistance should that prove necessary. Local parties are reminded of the benefit of such assistance and the joint commitment in the Grey Book to not unreasonably refuse such assistance. Such involvement must also be carried out in a timely manner with both parties committed to ensuring this is the case.

NJC assistance to local parties

The NJC Joint Secretaries clearly have a role in assisting dispute resolution at local level. Such issues need to be jointly referred, in writing, and the parties locally will need to demonstrate that consultation or negotiation processes have been exhausted at local level. The joint letter shall:

- Be agreed and signed by both local parties
- Contain a joint summary of the issue on which agreement has not been reached, evidence of discussion to date including the original proposal and any amendment made as a result of joint discussion at local level.
- Contain a concise statement from each party summarising their respective position.*

*This does not preclude each party subsequently providing unilateral briefings to their own Joint Secretary.

When requested to assist the Joint Secretaries will expect their respective parties to:

- Commit fully and with good intent to the process, maintaining an open mind, and whenever possible both parties present should have the authority to reach agreement.
- Ensure they are available for meetings, if and when required
- Respect the confidential nature of matters under discussion through the Joint Secretaries process

The NJC can also provide specific assistance in the form of the Technical Advisory Panel and the Resolution Advisory Panel, as appropriate. Both processes are contained in the Scheme of Conditions of Service (Grey Book). Where a matter is referred through either process all parties shall commit fully and with good intent to the process, ensuring they maintain an open mind, are available for meetings, and whenever possible both parties present should have the authority to reach an agreement.

Conclusion

All of the principles and commitments above are intended to encourage and support a joint approach to maintaining and improving upon good industrial relations within the fire and rescue service as a whole.

It is recognised that all parties have their part to play in ensuring that outcome is achieved.

Section 6C Local Consultation and Negotiation

PART C - LOCAL CONSULTATION AND NEGOTIATION

MODEL CONSULTATION AND NEGOTIATION PROCEDURES

Context

These procedures are intended to establish relationships and interactions that promote joint solution seeking to resolve differences between management and recognised trade unions that may arise from time to time.

CONSULTATION PROCEDURE

1. This procedure shall be used for matters that do not require collective agreement and should cover at least those issues described in the European Union Information and Consultation Directive and the arrangements for consultation should as a minimum follow the United Kingdom Regulations fall-back provisions.

Commencement

2. Consultation shall commence at the earliest opportunity and shall take place prior to final decisions having been taken. As far as practicable, all relevant, non-confidential, information will be made available to the recognised trade unions to enable meaningful consultation to take place.

3. Consultation will take place at the level in the organisation affected by the issues in question. Matters of a corporate nature will be dealt with corporately.

Purpose

4. Consultation between the fire and rescue authority and recognised trade unions shall be conducted with a view to reaching agreement. To this end the authority shall give consideration to all issues raised with them and will give reasons when it is unable to agree to any proposals put forward by the recognised trade unions.

5. The parties shall work jointly to resolve issues identified in the course of consultation and ensure that consultation is carried out effectively.

Conclusion

6. Consultation will be concluded at the point either when there is agreement or when the issues not agreed have been fully responded to. All parties agree to adhere to any prearranged timetable for completion of discussions.

Third party assistance

7. Where one party considers that external assistance may be beneficial it may seek the agreement of all other parties to this approach. No party would unreasonably refuse a request.

NEGOTIATION PROCEDURE

1. This procedure shall be used for all matters that are the subject of collective negotiation and agreement between the fire and rescue authority and recognised trade unions. The objective of the procedure is to resolve issues jointly. Individual issues should be dealt with through the grievance procedure.

Application

2. Issues shall be dealt with at the appropriate level but issues of a corporate nature should be dealt with at the corporate level in the first instance.
3. Any issue should be able to be pursued to a corporate level for resolution.
4. All parties should have the requisite information needed to deal with any issue.
5. All parties will use their best endeavours to ensure compliance with the timetables set out in the procedure unless otherwise jointly agreed.
6. Notwithstanding these formal procedures each party should give early notification to the other party that an issue has arisen and maintain a continuous informal dialogue and exchange of information on relevant issues.
7. External assistance may be used to facilitate the negotiating process where the parties agree that this would be helpful.

Stage 1

8. Other than for issues that arise initially at corporate level, the fire authority and/or recognised trade unions shall notify the other party of an issue that has arisen which falls within the purview of this procedure.
9. Where requested a meeting shall be arranged within ten working days to deal with the issue(s). As far as practicable any supporting information will be made available to all parties prior to the meeting taking place.
10. If no solution is found within ten working days the parties shall decide whether or not to continue discussion at this stage, refer to the next stage or end the discussion. Any party may refer the matter under negotiation to the next stage.

Stage 2

11. The fire and rescue authority and/or recognised trade unions shall notify the other parties of an issue of a corporate nature which comes within the purview of this procedure or which has been referred from a previous stage in this procedure.

12. Where requested, a negotiating meeting at a level appropriate to the issue shall be arranged within ten working days to deal with the issue(s) raised. As far as practicable all parties will be provided with relevant information prior to the meeting taking place.

13. If no solution is found within ten working days of the meeting the parties shall decide whether or not to continue or conclude the discussion.

14. Where one party considers that external assistance may assist in resolving an issue at corporate level it may request the agreement of the other parties to this approach, and no party will unreasonably withhold agreement to such a request. Such a request shall be made within five working days of completion of discussion at the corporate stage.

15. In such circumstances the parties may jointly agree to refer the issue to:

(1) the NJC Joint Secretaries; and/or

(2) ACAS; and/or

(3) the NJC Resolution Advisory Panel (which shall comprise an Independent Chair and the Joint Secretaries)

to assist the parties further with their negotiations.

16. The above should be completed within twenty working days of the request for external assistance being made.

Arbitration

17. If a difference remains unresolved, subject to agreement of the parties and agreed terms of reference, an issue may be referred to ACAS (in Northern Ireland, the Labour Relations Agency) for settlement by arbitration.

General

18. While an issue is subject to discussion/resolution under this negotiating procedure neither side will seek to take any collective action or introduce change.

19. Any difference over the application of paragraph 18 will be resolved by reference to the Independent Chair of the Resolution Advisory Panel. Submissions and the decision will be by correspondence and will be completed within ten working days of the reference being made.