



MERSEYSIDE FIRE BRIGADES UNION

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Date: 30th June 2014

FBU Registered Dispute: Imposed Policies

Dear Mr Mernock,

You will be aware that the Fire Brigades Union (FBU) has grave concerns regarding the decision taken by the Merseyside Fire and Rescue Authority (MF&RA) at its Annual General Meeting of the 26th June 2014, to unilaterally impose a suite of policies that impact upon our members.

I confirm that the FBU does not accept the imposition of these policies and as such I write to formally register a dispute in line with the nationally and locally agreed procedures.

The dispute plainly refers to a clear breach of the national scheme of conditions of service, a clear breach of the local conditions of service, clear breaches of Collective Agreements and a potential breach of our member's contract of employment.

You will recall I advised the elected members of MF&RA at the AGM of this position and despite one elected member seeking clarification of this matter via the Chair which was not satisfactorily provided, the Service still recommended that the suite of policies be imposed, a recommendation that the Authority accepted.

The fundamental starting point in relation to this issue are the arrangements that were in place for matters regarding conduct, capability and discipline which were as a result of significant negotiations both locally and nationally and which provided for the agreed procedures.

You will no doubt be aware those agreements, policies and procedures are contained within the National Joint Council for Local Authority Fire and Rescue Services Scheme of Conditions of Service (6th Edition) 2004, updated 2009 (the Grey Book) and supplemented by local Collective Agreements.

Collective Agreements are contractual by virtue of paragraph 1 of our members contract of employment; Service Instructions are contractual for the same reason and accepted by MF&RS as such along with them being long established practises which are clearly certain, notorious and reasonable.

Regrettably, it is the case that MF&RA decided at the AGM, as a result of Service recommendation, to unilaterally impose a number of Policies and Service Instructions and as such rendered a number of extant and jointly agreed Procedures and Service Instructions immediately redundant.

The FBU strongly contend that the procedures that have been unilaterally dismantled by the employer are contractual and are binding on both parties. Those imposed policies are:

- Conduct and Capability Policy
- Absence and Attendance Service Instruction
- Capability Service Instruction
- Conduct (Discipline) Service Instruction
- Firefighter Health and Fitness Service Instruction
- Medical Discharge Procedure
- Positive Mental Health and Wellbeing - Service Instruction

The details of the dispute are as follows:

1. MF&RA have manifestly breached the nationally and locally agreed negotiation procedures.

Paragraph 11 of CFO/076/14 declares that the policies in draft document form were presented to the FBU for consultation, paragraph 13 states that the Group considered the outcomes of consultation and agreed their recommendations.

You are aware that policies and procedures such as these are matters of negotiation rather than consultation and require the agreement of the FBU.

It has previously been the case that similar and relevant negotiations were jointly undertaken with the previous Principal Management team and an agreed position reached. There is no agreement with the FBU on the imposed Policies and it is deeply regrettable that you could not maintain the previous management team's position on this issue.

Conduct and Capability Policy, Conduct Service Instruction, Capability Service Instruction.

Section 6, Part B of the Grey Book provides for Conduct, Capability and Discipline procedures, the FBU and MF&RA have improved upon those national procedures via Collective Agreements, notably;

- the Collective Agreement signed by both parties on the 14th January 2005 which amends the discipline and grievance procedures specifically by providing for a Principal Officer as being the role with delegated authority to dismiss an employee.
- The Collective Agreement signed by both parties 7th June 2005 regarding dismissal of an employee and possible Employment Tribunal orders re-instatement, after the Authority has considered the appeal against dismissal. The agreement confirms appeals in relation to dismissal will be undertaken by the Authority.
- The Collective Agreement reached January 2005 confirming that the Authority would be the body that considers appeals against dismissal.

The National Joint Council, of which you are aware MF&RA is a constituent member, promulgated NJC/08/07 'Industrial Relations Protocol' which is supplementary to the model consultation and negotiation procedures contained in Section 6 of the Scheme and Conditions of Service (Grey Book) and as such are themselves contractual matters. NJC/08/07 states that the definition of matters of negotiation rather than those of consultation as:

'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.'

Accordingly, it is perfectly clear that the suite of policies you seek to impose are matters of contract and require agreement. To endorse and impose the Policies is the clearest breach of all relevant procedures and a breach of our members' contract of employment.

You may also be aware, I am sure, that your colleagues within Greater Manchester Fire and Rescue Service (GMF&RS) have the same issue in relation to GMF&RA wishing to amend an existing capability policy but have sent the matter to the NJC Joint Secretariat to determine whether the matter is one of negotiation or consultation. Again it is regrettable that you feel you can adopt a much more aggressive position, breaching rather than utilising agreed procedures and clearly damaging Industrial Relations.

Further, the locally agreed negotiation and consultation procedures are also clear in this matter in that they state

'Negotiation Procedure

- *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.'*

The procedures also state

- *'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.'*

It is regrettable you have clearly breached this condition in that you did not comply with this provision which is intended to resolve matters before they escalate, as this issue clearly now has.

As aforementioned the jointly agreed national Joint Protocol for Good Industrial Relations in the Fire and Rescue Service, relevant to this matter, states

*'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.**' (FBU emphasis)*

MF&RA are in clear breach of this condition of service.

Furthermore, the current Service Instruction regarding discipline states that *'This procedure has the status of a collective agreement with the representative bodies and as such is deemed as contractual'*.

Reference has been made to the Authority Report CFO/15/05 which contains the statement that the scheme of delegation can be revoked by the Authority. The FBU can confirm that we never agreed to that clause and the reference point is plainly the Collective Agreement signed by both the Brigade Secretary and the Assistant Chief Fire Officer at the time, acting in their capacity of Joint Secretaries, dated 14th January 2005 and is attached as appendix 1.

There is no mention of any revocation clause in that Collective Agreement and it is clear that the Collective Agreement refers to only the ACFO, DCFO or CFO having the ability to dismiss under the procedure. Regardless of the revocation clause, the notion of which the FBU rejects, the Proposal you have imposed dismantles this Collective Agreement by inserting Area Managers as a Role who can now dismiss.

It is concerning that you have taken this step in the knowledge that this issue has previously been a matter of dispute between the parties and has been subject to NJC Joint Secretary intervention. The matter was not resolved at that time and the procedures, as you are aware, requires you to refer the matter on to either ACAS and/or the NJC Resolution Advisory Panel (which shall comprise an Independent Chair and the Joint Secretaries), you have failed to do and imposed in breach of the agreed procedures.

In relation to the imposed Capability Policy, this Policy plainly breaches the current procedures in the clearest manner possible. The new Policy, imposed on our members, completely alters the manner in which issues of capability have previously been dealt with under the jointly agreed and current disciplinary procedures. Those procedures entirely reflect the national Grey Book procedures which are covered in Section 6, Part B entitled 'Conduct, Capability and Discipline' (*FBU emphasis*).

The proposal seeks to move away from the national procedures entirely and the Union has to ask the question why that is, particularly given the current Trade Dispute and the link fitness has with capability.

Additionally, the Capability Procedure removes key aspects of the agreed 'Conduct, Capability and Discipline Procedure' in that proper investigation, hearing and appeal with sanctions, understood and agreed by all parties, is removed and replaced by improvement notices, resulting in dismissal, demotion or redeployment; there is no ability for a redeployment sanction or improvement notice sanction within the national agreement.

It is a fundamental issue that procedures that result in the dismissal of firefighters are a matter of contract; they are contractually binding on both parties and therefore are matters of negotiation. I refer you again to the NJC Industrial Relations Protocol which you are acting in breach of.

Medical Discharge Policy.

In relation to the Medical Discharge Procedure, the new imposed Policy dismantles the Collective Agreement reached between the Authority and the FBU entitled 'Retirement Policy and Reengagement Policy'. This Collective Agreement was enshrined into Authority Policy via Authority Report CFO/45/07 on the 20th March 2007. There has been no agreement with the FBU to amend this Policy.

Again this is the clearest breach of the nationally and locally agreed procedures and the Union is unsure why Collective Agreements reached after extensive negotiations are presently being rejected in such a manner.

2. MF&RA have manifestly breached FBU members contract of employment.

You are aware that discipline procedures are a specific provision within members Statement of Particulars. Your actions have breached member's contract of employment.

3. MF&RA are in Material Breach of Relevant Health and Safety Legislation.

You sought MF&RA to impose a Firefighter Health and Fitness Policy; I can confirm that the Union does not agree this Policy in its current form.

You may also be aware that national negotiations are ongoing in relation to this issue within the NJC and which involves elements of the current Trade Dispute, it is utterly precipitate for MF&RA to attempt to impose this issue at this stage and completely undermines the benefits of a properly negotiated Occupational Fitness Policy.

You advised MF&RA that the Firefighter Fitness and Health Policy reflects advice recommended by the Chief Fire Officers Association (CFOA) - Firefit steering Group. Regrettably that is not the case and the FBU refers you to the report entitled 'Enhancing the Health, Fitness and Performance of UK Firefighters - An Interim Report' commissioned by CFOA, I understand you and other MF&RS colleagues are members of CFOA.

The report as stated is 'interim' which advises there is a great deal more work and consultation to undertake. It makes important statements which contradict the Policy you recommended MF&RA impose, including significant safety critical issues.

For example the Fitness Policy as it stands suggests that firefighters with a fitness level of VO2 max standard of between 35 and 42 ml.kg-1.min-1, will remain operationally available but be subject to a fitness/weight improvement regime.

CFOA's reports suggest that may potentially be dangerous and states

'The present study indicates that firefighters with an aerobic capacity below an occupational fitness standard of 42.3 ml.kg-1.min-1 would not be guaranteed to be safe and effective in their ability to complete necessary roles within their occupation. Although this does not greatly differ from the current fitness standard of 42 ml.kg-1.min-1, it does indicate that the lower VO2 max standard of 35 ml.kg-1.min-1 for continuation of work with remedial training amongst operational firefighters is potentially unsafe for the majority of firefighters.'

As I understand it the CFOA report was concluded in March 2014 and the Union presumes was provided to CFOA members for information and consideration. It is therefore safe to presume that MF&RS is aware of the report's findings and in the event that CFOA members did not become aware of the findings in March 2014, you clearly are aware now.

The fundamental issue seems to be that the CFOA commissioned report has indicated a risk to firefighters which can only be considered now as foreseeable. MF&RS is then required under Regulation 3 of the Management of Health and Safety at Work Regulations 1999 to undertake a risk assessment to assess the risk to employees and to implement control measures if risk is identified.

You have failed to provide the FBU with a risk assessment as required; accordingly you have failed to provide the Union the opportunity for statutory consultation on the risk assessment. Regrettably you may potentially be placing employees at increased risk in disregarding the FBU's stated concerns on the Fitness Policy and standing contrary to the interim findings of the CFOA report.

You will be aware that the report also states that

'It is recommended that we now embark on a period of consultation, starting with the Stakeholder and Technical Panels established, with the aim of deriving agreed minimum acceptable standards and test protocols.'

In order for the implementation of empirically-informed fitness standard to be successful in improving and maintaining the health and fitness of UK firefighters there must be some national agreement on the implementation and governance of fitness testing and standards. Furthermore, consideration should be given to the necessary resources to ensure employees are able to meet recommended criteria.'

Your actions in recommending the Fitness Policy in the manner you have are clearly precipitate and contradict your own Associations guidance.

4. Failed to give Due Regard to the Impact on Equality via an Equality Impact Assessment (EIA).

The FBU believes the Fitness Policy in its current form is potentially detrimental to some protected conducts as laid out in the Equality Act 2010 which should have been assessed and included in the Equality Impact Assessment (EIA) required to be undertaken for such a Policy.

The Equality and Diversity Implications section of the Authority Report advised members that all proposed policies and procedures have been subject to an EIA attached as appendix I. This is not the case. You will see from that EIA that it only assesses the impact on equality in relation to the Conduct and the Capability Policy, there has been no EIA undertaken for the other policies as required.

As such the EIA has not been provided the Union; simply put it is clear that MF&RS has not undertaken an EIA on this Policy which it is required to do.

Given all aforementioned points the FBU requires you to progress the dispute in line with the agreed dispute resolution machinery, I would suggest in the first instance that the NJC Joint Secretaries are contacted as a matter of urgency. I can confirm that I have contacted the employee's side of the NJC Joint Secretariat for expediency.

I would also ask you to confirm that due to the registration of this dispute that you will comply with Section 6, Part C, Paragraph 18 in that while an issue is subject to discussion/resolution under this procedure neither side will seek to take any collective action or introduce change, a condition repeated in the locally agreed procedures also. That would necessitate that the Policies agreed by the Authority be placed in abeyance pending dispute resolution and I would be grateful for your confirmation on that point.

I look forward to your response and if you require any further information please do not hesitate to contact me.

Yours sincerely

Mark Rowe
Brigade Secretary

cc: Dave Hanratty
Janet Henshaw
Matt Wrack
John McGhee
Kevin Brown
Les Skarratts