

CONSULTATION ON REVIEW OF EMPLOYEE REPRESENTATION RESPONSE FROM UNITE

Report Title: Trade Union Facilities

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Introduction

Bromley Council has announced its intention to withdraw all block trade union facility time. This report is a response to that proposal. It will come as no surprise that Unite opposes the proposal. However, what may come as a surprise is that the basic premises that underpin the employers decision are deeply flawed. This report makes the case for maintaining the block facility arrangement as it is. Indeed, it is our case that under a fair analysis the amount of block facility time would be increased.

Trade union facility time and facilities are the time and resources that unions negotiate from employers so that they are able to represent members both individually and collectively in negotiations with managers. Union representatives have had a statutory right to reasonable paid time off to carry out trade union duties since 1975, and most of the current provisions come under the Trade Unions and Labour Relations (Consolidation) Act 1992, introduced by the then Conservative government. Guidance on the practical application of these provisions is provided in the ACAS Code of Practice. In Bromley, the Unite Branch Secretary is allocated 27 hours per week for trade union duties. We are clear that it is this that is in dispute - the Council has not withdrawn the right to paid time off for trade union duties - it is the way in which it is allocated that is in dispute.

There has been increased interest from sections of the media and from unrepresentative organisations such as the Tax Payers Alliance. There have been negatively couched press stories, requests under the Freedom of Information Act to find out the cost to public sector employers and Parliamentary questions. However, the evidence supports our view of the reality of the provision of block facility time arrangements such as that which currently exists at Bromley. It can not simply and crudely be regarded as a cost to employers, on the contrary the work undertaken by our Branch Secretary in Bromley represents an important workplace resource.

Financial Implications

The employer has stated that it can no longer justify the cost of a block facility time release for Unite Branch Secretary Kathy Smith. Instead, this will be removed and Kathy will return to her substantive post. The employer states that it will then give reasonable time off on an ad hoc basis and that it expects the union to allocate the work across the shop stewards that exist in Bromley. If the employers motivation was indeed financial, Unite will have expected the employer to provide detail of how much it estimates to save as a result of withdrawing the block facility arrangement. Unite has already made clear and the employer has not challenged the fact that the same workload as far as trade union duties is concerned will exist - indeed the changes taking place in workplaces across the employer as a result of Council decisions are likely to increase. Therefore, the Council expects other reps to pick up this work on an ad hoc basis. Kathy Smith is paid as a scale BR5 Library assistant. The experienced trade union reps that exist in Bromley and who are expected by the Council to pick up the work are all paid at higher grades. Therefore, based on this simple analysis, the proposal will in fact cost more. It should also be noted that neighbouring boroughs have graded the post of Branch Secretary (Croydon and Lewisham) under the Single Status Job Evaluation scheme. The duties of the role (which are near identical to Bromley) evaluate at PO1 and PO2. This is considerably higher than the grade on which Kathy is paid.

Service Impact Implications

The block facility time arrangements allow for planning, minimise the need to re-arrange meetings and mean minimal disruption. By moving to an ad hoc system applicable to reps across the Council the employer is inviting huge disruption to the Human Resource process. It also means that individual departments will have to cope with unplanned absences from the workplace as reps make increased requests for reasonable time off to perform trade union duties as allowed for under the law. There will be a service and cost impact that local managers will be left to deal with. From a practical point of view, it simply makes no sense to move from a block facility arrangement. In fact, studies show that reasonable facility time arrangements actually improve business performance. In 2007, the Department for Business, Enterprise and Regulatory Reform reported that the work of union reps resulted in savings to the exchequer of between £22m - £43m as a result of reducing employment tribunal cases, benefits to society worth between £136m - £371m as a result of reducing working days lost due to workplace injury and benefits to society worth between £45m - £207m as a result of reducing work related illness. In addition, the study found savings of at least £19m as a result of reducing dismissals and savings to employers of between £82m -£143m in recruitment costs as a result of reducing early exits.

The employer is claiming that reasonable time off will continue to be granted based on the exigencies of services. The reality is that the model proposed by the employer, of ad hoc arrangements spread across reps rather than a block facility arrangement is simply unworkable, impractical, will be more disruptive and more expensive. Rather than react in a knee jerk fashion to the Tax Payers Alliance, the employer needs to look at the reality of the situation and make a decision based on facts and figures.

Trade Union Duties

It is worth reminding ourselves of the role carried under the heading of trade union duties. Union representatives carry out a wide range of often demanding and complex roles, including;

Provision of informal advice to colleagues

Formally representing members in grievance and disciplinary hearings

Negotiating with managers

In addition to the above, many union representatives carry out a number of specialist roles in relation to health and safety at work, improving access to learning and skills, improving equality and diversity in the workplace and working with employers to make workplaces more environmentally friendly.

The role of a union rep has become increasingly complex due to the dramatic increase in changes to employment rights and law. This places great demands on reps - as a result more time now has to be spent keeping abreast of employment law and researching relevant issues.

How Much Time Is Actually Paid For?

In Bromley, the employer allocates **27 hours** for the Unite Branch Secretary to carry out trade union duties. The reality is that in order to carry out trade union duties, our Branch Secretary works considerably in excess of these hours, on an unpaid basis, every week, in order to carry out trade union duties, typically 15 hours plus. The employer should be reminded that the reason for this is because of the demand generated by the employers actions - it is not a case of Kathy looking for the work. Instead, it is the case that unpaid hours doing trade union duties are necessary because of the employers actions, be it re-organisations, individual casework or a whole list of other demands linked to the employers budget and commissioning strategy. At no point has Unite sought payment for these **extra** hours spent undertaking trade

union duties - something that union representatives are entitled to paid time off for. In fact, a good argument exists that Kathy Smith saves the Council money. This in fact reflects a national picture. What was then the Department for Business Enterprise and Regulatory Reform commissioned a survey that found that reps in the public sector contribute up to 100,000 unpaid hours of their own time each week. Unite is more than willing to justify our position in Bromley and would invite the employer to work with Unite to calculate the additional earnings that Kathy would have received had she been paid for all hours spent undertaking union duties. Only then will the Council have a true picture of the position - something which surely is vital before a decision is made.

The Council also need to be mindful of the impact on work-life balance for reps, who are Council staff. The proposal from the Council will in fact increase pressure on Kathy to do even more work in her own time.

Next Steps

The employer has made clear that if it goes ahead with the proposal, there will be occasions when it will refuse Kathy time off to carry out trade union duties on the basis that other reps exist. This is not acceptable to the trade union and in our view is clearly open to legal challenge. Unite already has legal opinion on this precise point. Therefore, we will be in a position where each refusal is challenged through the employment tribunals. However, this is not a route we favour, it is not good for the employer, the union or our members. Instead, our alternative proposal is that the employer does not move ahead to implement but instead carries out a proper review before it makes any decision. This is surely the process with other changes of this significance. If the Council has a financial argument, it needs to set it out and cost it. This report believes that no financial argument exists. If the proposal is an ideological one about the role of trade unions, then the Council needs to make this point clearly and we will engage with that debate.