



NEWS BULLETIN

Public & Private Sectors

T.U.P.E. & Privatisation

TUPE - Transfer of Undertakings (Protection of Employment) Regulations 2006, is a phrase that is becoming more and more familiar to us all, particularly in the custodial industry. Successive governments have demonstrated their determination to privatise huge chunks of the prison system; including the Courts, prison transfers and the immigration system. Numerous academics and others, particularly those with vested interests, seek to rubbish the policy but it continues unabated. Why do governments seem to like it so much? Because it saves them money - Fact!

The TUPE regulations, coupled with the *European Acquired Rights Directive*, is there to afford you a degree of protection from the worst excesses of the unscrupulous employer whom may inherit you as an employee. Having said that, the PSU has been involved in dozens of TUPE transfers and we are yet to see an example of serious abuse of the regulations by employers. The regulations are nevertheless complex. Mistakes and misunderstandings do occur, but goodwill from all parties usually results in an acceptable resolution to any unforeseen difficulties that arise.

The PSU could, like many other trade unions, channel all of our resources into fighting the policy of privatisation. Why not? Because, like many of those trade unions that perceive themselves to be very powerful, we would make not one iota of difference to Government policy. Most of those trade unions that have actively pursued the anti-privatisation agenda, failed to effect change from the last, New Labour Government - the political party that the unions largely financed. So what chance is there of deflecting the current Administration?

We believe that it is preferable to try and maximise any benefits, such as there may be, that will result from privatisation. Of course we recognise and acknowledge the worry and anguish felt by those members currently facing the prospect of losing their status as Crown servants to the private sector. Already, public-sector pensions are under vicious attack from the Government. Further, recent announcements confirm that more prisons are to be closed and more are to be privatised - and it will happen! Inquiries that we are receiving, particularly from our public-sector members, suggest to us that there is widespread, fundamental misunderstanding of the TUPE regulations. **On the right-hand side of this page we therefore offer a list of the TUPE basics.**

We could never hope to produce a guide that covers every eventuality that is likely to occur when a transfer takes place. Having said that, we do support the content of such publications with our network of local officials and of course the full-time officers of the PSU.

Finally on this subject, we would caution all members not to listen to

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TUPE Q & A

Q. What about my current contract of employment, does it transfer?

A. Yes, all of the main terms and conditions transfer to the new employer - pay, hours, annual leave and all of the other bits and pieces that go with it.

Q. Can I refuse to transfer to the new employer?

A. Yes! However, that would amount to a resignation. Not redundancy. Not dismissal. Just resignation in the usual way.

Q. Could the new employer make me redundant?

A. In some circumstances, Yes. However, there must be really genuine reasons for this - not just because he doesn't like you. It is unlawful for the new employer to dismiss you for any reason related to the transfer.

Q. I have a personal injury claim outstanding with my current employer, what happens to that?

A. Any outstanding legal claims against your employer, including Employment Tribunal applications, transfer automatically.

Q. Will my occupational pension transfer?

A. No! Occupational pensions are excluded from the TUPE regulations. However, if your old employer provided an occupational pension scheme, the new employer must provide a

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TUPE - Continued...

rumour and *tea-room talk*. Talk to your local officials or call us, however daft you think the question may be. Usually, there is a genuine worry and if you had all the answers, you'd probably be writing this rather than reading it! (not that we profess to know it all either, but, as the advert says: *we know a man who does*). □

Other Bits & Pieces

Discipline & Grievance

We have noticed of late, that some members when faced with disciplinary proceedings or when lodging a grievance, hang-on to bits of important evidence in the forlorn hope that they might better use that information at a later stage. Please, don't do that. You won't be able to use it, usefully, further down the line. If it's available when you start, use it or lose it! □

Serco Home Affairs - Viewpoint Survey

Serco are again organising their *Viewpoint Survey* of Home Affairs staff for 2011. Clearly, the survey is a useful tool enabling Serco to accurately assess staff opinion. For all staff it is a golden opportunity to '*tell it as it is*' with complete anonymity. As your representatives, we are not slow to tell your employer when they get things wrong. Sometimes of course, we are equally keen to tell them when they do things right and this is one of those occasions. It is also your chance to help us to help you.

Very few companies care enough about the opinions of their staff to conduct such surveys. So, whilst we have an employer that does so care, use that opportunity. Be frank and honest and think carefully when completing the survey. **This really is a serious and meaningful exercise that may well make a difference. It will only do so however, if you bury any cynicism that you may have and sufficient numbers of you participate.** □

New PSU Branch - HMP Winchester

We offer a very warm welcome to all new members from HMP Winchester. The Winchester branch join a growing number of active branches within the public-sector. We are now seeking to organise appropriate training for the new, branch officials led by Martin Cole (Chair), Ray Skinner (Secretary), together with Andy Ross, Sue Calton and Phil Nichols completing the committee. □

New PSU Rule Book Available

Finally, the new pocket-sized PSU Rule book, (effective June 2011), is now hot-off-the-press and available to members. All new members are issued with a copy when they join the Union. Existing members or branches may request copies from PSU Headquarters. The rules are also published on our website www.psunion.org.uk. □

TUPE Q & A continued...

pension scheme that complies with certain minimum standards:

- *contributions to a final salary scheme at an equivalent rate and not less than six per cent of the employee's pensionable pay;*
- *benefits under a money purchase scheme subject to a requirement to match the employee's contributions up to a limit of six per cent of the employee's basic pay, or*
- *a stakeholder arrangement in which the employer matches the employee's contributions up to a limit of six per cent of basic pay.*

However, those transferring from the public sector prisons (as is currently happening) are treated differently. Although change is envisaged, such workers remain covered by the 2000 Cabinet Office Statement of Practice on Staff Transfers in the Public Sector. That statement requires that you must be provided with a "broadly comparable" pension scheme and the safeguarding of accrued pension benefits.

Q. What about continuity of service, is that carried over?

A. Yes!

Q. What about collective bargaining agreements with trade unions, do they transfer?

A. Yes! However, that does not stop the new employer from changing that trade union recognition once the transfer is effected.

Q. Someone told me that TUPE only lasts for two years, is that so?

A. No! There are no time limits attached to your protection under the TUPE regulations.

Q. A colleague has just been sacked but the appeal is after the transfer. Will the appeal still go ahead and what might happen?

A. Yes it will and if the dismissal is reversed, the new employer must accept that.

Q. There's a lot to take in, I'm really confused, I keep thinking of all sorts of things that worry me. What can I do?

A. First of all stop worrying. Then, just imagine that everything that you have now will move with you and you won't be far wrong. □