



XXVIII
2009

BILLET D'ÉTAT

TUESDAY 27th OCTOBER 2009

REQUÊTE - DISPUTE WITH AIRPORT FIREFIGHTERS –
DISESTABLISHMENT OF TRIBUNAL

B I L L E T D ' É T A T

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE, on TUESDAY, the 27th OCTOBER, 2009,** immediately before the meetings already convened for that day, to consider the item contained in this Billet d'État which has been submitted for debate.

G. R. ROWLAND
Bailiff and Presiding Officer

The Royal Court House
Guernsey
23 October 2009

REQUÊTE**DISPUTE WITH AIRPORT FIREFIGHTERS –
DISESTABLISHMENT OF TRIBUNAL**

THE HUMBLE PETITION of the undersigned Members of the States of Deliberation SHEWETH THAT:-

1. On 25th May 2009, the Guernsey Airport Fire Fighters took industrial action leading to the Airport being closed for business save for emergency cover until the late afternoon of 26th May 2009, at which time the Airport Fire Fighters restored Category 6 cover. This level of cover was restored after a meeting of seven members of the Policy Council including the Chief Minister as Chairman, at which it was decided to support a proposal that the Public Services Department, as the employing body of the Airport Fire Fighters and having responsibility for the provision and administration of facilities and services in respect of the Airports, would make a ‘recruitment and retention’ payment spread over the next 12 months to the Airport Fire Fighters.
2. On 16th July 2009, after consideration of a Requête dated 29th June 2009, signed by Deputy M M Lowe and seventeen other Members of the States, the States of Deliberation resolved (on Billet d’État XXII of 2009) as follows:
 - “1. That it is expedient that a Tribunal be established under the provisions of the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949, as amended, to inquire into a definite matter of urgent public importance, namely, the facts and circumstances leading up to and surrounding the industrial action taken by the Airport Fire Fighters at Guernsey Airport in May 2009, including the circumstances in which that industrial action was resolved.
 2. That the Terms of Reference for the Tribunal shall be
 - a. to inquire into the circumstances leading up to and surrounding the industrial action taken by the Airport Fire Fighters at Guernsey Airport in May 2009, including the circumstances in which that industrial action was resolved,
 - b. to examine the actions and omissions of Departments and Committees of the States of Guernsey, relevant statutory bodies, other organisations and responsible individuals concerned in the dispute that led to the industrial action being undertaken and the steps that were taken to resolve it, with a view to identifying any lessons to be learned by the States of Guernsey,
 - c. to make such recommendations as may be considered appropriate,

- d. to deliver a report on its findings to the Presiding Officer of the States of Deliberation as soon as practicable.”.
3. On 25th September, 2009 the draft States Strategic Plan was published in Billet d’État XXVI of 2009, identifying a budgeted cost for that Tribunal at £250,000, together with numerous other requests for funding which the Policy Council feels unable to recommend due to limited revenue
4. In the opinion of your Petitioners the outcome of the Tribunal of Inquiry is unlikely to be of any consequence, and its budgeted cost would impact adversely on the provision of important new services.

THESE PREMISES CONSIDERED, YOUR PETITIONERS humbly pray that the States may be pleased to resolve to rescind their Resolution of 16th July 2009 on Billet d’État XXII of 2009.

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

This 1st day of October 2009

J Kuttelwascher
M P J Hadley
T J Stephens
M J Storey
M S Lainé
J Honeybill
J A B Gollop

(NB In pursuance of Article 17 of the Rules of Procedure the views of the Departments and Committees consulted by the Policy Council, as appearing to have an interest in the subject matter of the Requête, are set out below.)

COMMERCE AND EMPLOYMENT DEPARTMENT

Deputy M G O'Hara
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

8th October 2009

Dear Deputy O'Hara

REQUETE – DISPUTE WITH AIRPORT FIRE FIGHTERS – DISESTABLISHMENT OF TRIBUNAL

Thank you for your letter of the 6th October in which, in the light of its interest in the subject matter of this requête, you invited this Department to comment on the matter if it should so wish.

The Department wrote to the Policy Council on 2nd July setting out the objections of a clear majority of its members to the proposal, as it was at the time, to establish a Tribunal of Inquiry. I will not repeat those views in this letter, but I attach a copy of that correspondence for the record. In the intervening months, the Department has not changed its view and a majority of members still believe that a Tribunal of Inquiry, no matter how well intentioned, will be of little assistance and could have a disruptive effect on the resolution of the matters that precipitated the dispute.

Further, the Department's view is that, by forcing the disclosure of confidential discussions, the Tribunal could in the longer term, damage industrial relations, undermine the trust between parties, and erode trust in the existing dispute resolution processes. The Department continues to take the view that the potential benefit that might accrue from an examination of the policies and roles of States' bodies engaged in these matters at the time is likely to be very small and illusory. That the processes had failed and that a new path has to be found was, and is, recognised by all.

The Department was heartened at the time by its understanding that relations between the Union, the Public Services Department and Airport Management were very good. Members believe that that is the best basis for establishing durable and reasonable solutions and should be allowed the time and space to arrive at a solution without the intrusion of political scrutiny.

The Department supports the proposal to rescind the States' decision to establish a Tribunal of Inquiry into this matter

Yours sincerely

M Lainé
Deputy Minister

*Enclosed – copy of correspondence sent to the Policy Council on 2nd July 2009
(published in Billet d'État XXII of 2009)*

*The Deputy Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port*

2nd July 2009

Dear Deputy Flouquet

AIRPORT FIRE-FIGHTERS : (REVISED) REQUÊTE ON THE ESTABLISHMENT OF A PUBLIC TRIBUNAL

Thank you for your recent letter with the revised Requête, which differs to some degree to the original and has caused the Department to review the response it intended to send.

The Department is conscious that there is an interest in the States for an examination of the actions and decisions that resulted in the cessation of industrial action by Airport fire fighters in late March, and which averted what was fast becoming a damaging disruption to the Island's air transport links and in turn to the Islands' economy and its reputation.

The Commerce and Employment Department is mindful of its mandate and role in promoting good employment practices and policies and the need to encourage a climate of good industrial relations because of the economic benefits this brings to the Island and its people.

After careful consideration of this matter and of the changed wording set out in the revised Requête, a clear majority of members do not support the call for an investigation as suggested by the Requête. There was majority support for the proposal that the Scrutiny Committee should conduct an independent inquiry into this matter.

A Balance of Benefits

There can be no doubt that the events surrounding the fire-fighters' dispute seem to reveal strikingly different views of the way Department and Committee mandates should be discharged. Further, there is clearly disagreement between members of the Assembly as to what constitutes an appropriate way to conduct this type of negotiation on pay and conditions, in a pragmatic fashion. In the light of that, an examination of actions, to identify any lessons to be learned, is an attractive prospect.

In this case a majority of the Department's members take the view that the Requête of 29th June, is not of sufficient value to put at risk the establishment of a durable solution to the matter of the fire-fighters pay and conditions of employment, which has run on and remains unresolved, after nearly two years. It is felt there is a significant risk that an Inquiry of this nature will drag these matters into the public arena and not allow the necessary discussions between management and staff to take place over the next 11 months in an appropriate and conciliatory manner.

A protracted and public analysis of events surrounding the fire-fighters dispute will have a negative and unhelpful impact on the process of arriving at a final agreement. It seems possible it will do little to support long term good relations both in the specific area of concern and the wider area of public employment.

One member of this Department is a signatory to the Requête. However the remaining members are convinced that this process should not be agreed by the States as it is a time and resource consuming process quite out of proportion with the problem needing to be investigated or the benefits it might bring.

Unwelcome Scrutiny and Dispute Resolution

While there seems to be the appetite for this form of investigation in some parts of the States, there does not appear to be a matching interest in this happening in the workplace in question where it is clear, from the reports and statements made in the media by the Unite Regional Organiser, that, industrial relations between the Union, the Public Services Department and Airport Management are very good. The PSD and Airport Management have not contested this view.

Collective bargaining is normally conducted by employers/managers and trade unions/staff in a private forum. If agreement cannot be reached, a number of voluntary, third party mechanisms can be invoked to help the parties to try and reach agreement. These processes can involve joint working parties, conciliation or mediation, and are all protected by duties of confidentiality to create a climate of openness in which options and alternatives can be explored. They aim to reach agreement, without formal positions being established that can be used by one party against the other at a later date if the process breaks down.

If a Tribunal investigation ventures into this 'confidential' territory, the employer, employees, the trade union, and the independent third parties are likely to be required

to breach confidences by having to give evidence. A majority of the Department's members are convinced that there is a significant risk that long-term industrial relations will be damaged, as inevitably, some blame will be apportioned to one side or the other, or both. It can be anticipated that a result of this may be suspicion and concern from both employers and trade unions and loss of trust in the processes.

If the processes to assist dispute resolution, which other than in exceptional situation works away from the spotlight, do suffer a loss of trust, this could lead to them becoming redundant. We could, as a result, leave a significant void in the availability of dispute resolution processes in the Public Sector.

Too Many Reviews?

The Department is aware that the role and responsibilities of PSRC were under examination anyway and to be the subject of a review prior to the escalation of the Airport Fire Fighters situation. That the current system was not working well and needed attention was something that has already been identified by the Robinson Report in 2008. Earlier the Clark report in 2000, proposed an alternative route to pay negotiation even before the re-organisation of the Machinery of Government in 2004. This begs the question of what important new insights at a policy level will be revealed by the envisaged investigations.

Consultation

This Department has a mandated responsibility for the Industrial Disputes Officers (albeit they are independent statutory officials appointed by the States) who are empowered to act independently of the Department when a dispute is lodged via the Department's offices. Bearing that unique perspective and insight in mind, the Department's members unanimously agreed they would canvass opinion from the Industrial Disputes Officer and his Deputy on the general issue of the possible effect of this public investigation process on the furtherance of good industrial relations. In the event the Industrial Disputes Officers were minded to reply and a copy of their letter of comment is enclosed with this letter.

In conclusion, I can say that, in the opinion of a majority of members of this Department, the Requête brings with it a significant risk that it will have a negative impact on industrial relations and that it should not be accepted by the States.

Yours sincerely

*M Lainé
Deputy Minister*

Enc.

Deputy C McNulty Bauer
 Minister
 Commerce & Employment Department
 PO Box 459
 Raymond Falla House
 St Martins
 Guernsey
 GY1 6AF

2nd July 2009

Dear Deputy McNulty Bauer

AIRPORT FIRE FIGHTERS – REQUETE DEALING WITH THE ESTABLISHMENT OF A TRIBUNAL (OR PUBLIC ENQUIRY)

We write in response to the invitation by Commerce and Employment to comment on the second draft of the proposed Requete, for the establishment of a tribunal to look into the Airport Fire Fighters dispute. We do so with the understanding that our statutory role as Industrial Disputes Officers requires us to maintain impartiality and independence from all parties and, in addition, certain aspects of the dispute resolution process are protected by a duty of confidentiality.

It is our view that any public inquiry or tribunal must seek to understand why it has been convened. Given that the issues which brought about the current public (and political) interest in the Airport Fire Fighters situation have not yet been resolved, a public inquiry or tribunal may have an adverse effect on any progress that might be made towards resolving the outstanding issues.

Some six weeks has already elapsed since the Airport Fire Fighters and the ‘employer’ agreed to try and resolve the outstanding issues within a twelve month period. If a public inquiry or tribunal were convened, this is unlikely to be concluded until the Autumn, at which point valuable time will have been lost, as the parties may find they need to spend time preparing for the inquiry/tribunal.

*We also have strong concerns that any summons to attend by parties who may not wish to participate in the process voluntarily, could result in further industrial action by way of a protest, or at worst ‘secondary’ action by other related public sector employees. **We must stress however that this is our opinion and highlight this to you as a concern which may or may not happen.***

We reiterate that the issues relating to the Airport Fire Fighters have not yet been resolved. Any public inquiry or tribunal could, in our opinion, severely jeopardise any talks or negotiations yet to take place and may well undermine the already fragile relationship between the parties. It is our view that any public inquiry or tribunal will

be detrimental to maintaining a positive industrial relations climate, not only with the current discussions with Airport Fire Fighters but possibly for other public sector groups involved in future negotiations.

If industrial relations and dispute resolution mechanisms (many of which are conducted in a private, mutual and confidential arena) are likely to be subjected to public scrutiny, there is a significant risk that these valuable and proven processes will become devalued and potentially ineffective, as both employers, employees and trade unions would lose trust in the process. In our view, this situation could lead to a further risk of industrial unrest and industrial action.

Should the States decide to progress with a public inquiry or tribunal it might be better to consider delaying that process until the outstanding issues with the Airport Fire Fighters have been finally resolved through the mutual agreement of the parties concerned.

Referring back to the point about understanding why a public inquiry or tribunal has been convened, the risks associated with further damaging the current, fragile nature of industrial relations in the public sector, could be significantly reduced if any public inquiry or tribunal were restricted to looking at the role of 'government' in relation to the processes which have been set up and under which mandates they have to work/comply'.

We hope you will find these comments helpful in responding to the Policy Council. In addition, we are both in agreement that you may use any part of this letter, attributed to the Industrial Disputes Officers, or indeed, if you felt it appropriate, use the complete letter if your Board sees fit to do so.

Yours sincerely

*Mr M A Fooks
Industrial Disputes Officer*

*Mrs M Tiffin
Deputy Industrial Disputes Officer*

PUBLIC SERVICES DEPARTMENT

Deputy M G O'Hara
Member
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

9th October 2009

Dear Deputy O'Hara

REQUETE – DISPUTE WITH AIRPORT FIRE FIGHTERS – DISESTABLISHMENT OF TRIBUNAL

I refer to your letter of 06 October 2009 enclosing a copy of the Requete signed by Deputy Kuttelwascher and six other States Members.

The Board of the Public Services Department had not previously objected to the proposed Tribunal of Inquiry as it was satisfied that it had acted properly at all times and was prepared to give a full account of its actions. It did however highlight the risks associated with conducting a Tribunal of Inquiry into what was, at heart, an industrial relations issue.

It is recognised that the findings of any Tribunal cannot change what is now history but equally the Board acknowledges that there are lessons to be learnt. The Department therefore remains open to some form of independent and objective assessment of the situation but concurs with the signatories to the latest Requete that the likely cost of the formal Tribunal of Inquiry is beyond that which could be justified in the current financial climate.

Yours sincerely

B M Flouquet
Minister

SCRUTINY COMMITTEE

M G O'Hara
Member
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

7th October 2009

Dear Deputy O'Hara,

REQUÊTE – DISPUTE WITH AIRPORT FIRE FIGHTERS – DISESTABLISHMENT OF TRIBUNAL

Thank you for your letter dated 6th October 2009, inviting the Committee for its comments on the proposed Requête to rescind the States previous decision to establish a tribunal of inquiry.

As you will be aware, the Committee had begun a process and appointed a Panel to review the fire fighters dispute but in the interest of avoiding unnecessary duplication of work it ceased its own investigation at the point that the States approved the establishment of a tribunal of inquiry. If the States were to subsequently determine to disestablish the tribunal, then the Committee would reconsider whether it wished to carry out its own investigation. This would need to be considered in the light of the Committee's now established forward work programme and current priorities, as well as taking into account how events have moved on since June.

The Committee has no comment to make on the substance of the Requete, which is entirely a matter for individual States Members to determine whether the tribunal of inquiry continues to be a matter of priority for the States.

Yours sincerely,

Deputy B L Brehaut
Chairman

PUBLIC ACCOUNTS COMMITTEE

Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

9th October 2009

Dear Deputy Trott

**REQUÊTE – DEALING WITH AIRPORT FIREFIGHTERS – DISESTABLISHMENT
OF A TRIBUNAL**

Thank you for the letter dated 6 October 2009 from Deputy O’Hara, a member of the Policy Council, which invited comment from the Public Accounts Committee in relation to the prayer of the Kuttelwascher Requête and the disestablishment of a tribunal on the dispute with Airport Firefighters.

The Committee considered the prayer at its meeting on 7 October 2009 and agreed to reaffirm its comments to the earlier Lowe Requête – that being it has no comment to make, although individual members of the Committee may wish to comment on the prayer in their capacity as members of the States of Guernsey.

Yours sincerely

Deputy Leon Gallienne
Chairman

PUBLIC SECTOR REMUNERATION COMMITTEE

Deputy M G O'Hara
Member, Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

13th October 2009

Dear Deputy O'Hara

**REQUÊTE – DISPUTE WITH AIRPORT FIREFIGHTERS – DISESTABLISHMENT
OF TRIBUNAL**

Thank you for your letter of 6 October the contents of which have been noted.

As a Committee we believe that it is inappropriate to take a Committee view. Individual members will, of course, be free to make their personal views on this matter known in the House when it is debated.

Yours sincerely

A H Langlois
Chairman

(NB The Policy Council has no comment on the proposal.)

(NB The Treasury and Resources Department has no comment on the proposal.)

The States are asked to decide:-

Whether, after consideration of the Requête dated 1st October 2009, signed by Deputy J Kuttelwascher and six other Members of the States, they are of the opinion:-

To rescind their Resolution of 16th July 2009 on Billet d'État XXII of 2009.

**IN THE STATES OF THE ISLAND OF GUERNSEY
ON THE 28th DAY OF OCTOBER, 2009**

**The States resolved as follows concerning Billet d'État No XXVIII
dated 23rd October 2009**

REQUÊTE

**DISPUTE WITH AIRPORT FIREFIGHTERS –
DISESTABLISHMENT OF TRIBUNAL**

After consideration of the Requête dated 1st October 2009, signed by Deputy J Kuttelwascher and six other Members of the States:-

**TO NEGATIVE THE PROPOSITION to rescind their Resolution of 16th July 2009 on
Billet d'État XXII of 2009.**

**K H TOUGH
HER MAJESTY'S GREFFIER**