



# Outsourcing and collective bargaining

EPSU - European Federation of Public Service Unions  
FSESP - Fédération Syndicale Européenne des Services Publics  
EGÖD - Europäischer Gewerkschaftsverband für den öffentlichen Dienst

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## **Outsourcing and collective bargaining**

### **Background**

EPSU has recognized that privatization and liberalization have put utilities companies, whether public or private, under pressure to restructure and cut costs and that outsourcing often forms part of these policies.

The June 2004 EPSU Congress agreed a resolution on collective bargaining which noted that:

“All too often modernisation [is]... nothing less than a euphemism for cost cutting, outsourcing and violation of worker’s rights. EPSU supports modernisation that is based on negotiations between employers and unions. One-sided employer or government measures are rejected.”

Corporate restructuring, of which outsourcing is one of most common elements, is one of six key collective bargaining themes that EPSU is committed to develop policy on over the current Congress period.

The importance of this issue was underlined at a seminar on collective bargaining in the utilities organized jointly by EPSU and the European Trade Union College in May 2004. The participants, mainly from EPSU affiliates in the new member states had an open discussion about the problems they faced. It emerged that the two working groups separately identified outsourcing as the main challenge.

Outsourcing usually meant the transfer of employees to new companies who were not covered by the same collective agreement and perhaps where there was no existing structure of trade union representation or collective bargaining. Participants at the seminar recognized this as a problem common to most of them and one where it might be possible to plan some kind of co-ordinated response from EPSU affiliates.

It was agreed that the EPSU secretariat should prepare a discussion of outsourcing for the next meeting of the utilities standing committee and carry out a survey of EPSU affiliates in the utilities to try to find examples of best practice in dealing with outsourcing.

This report is based on presentation given to the standing committee on utilities in September 2004 and the findings of the survey.

### **Definition**

Outsourcing covers range of activities that may be variously known as:

- ❑ contracting-out,
- ❑ sub-contracting,
- ❑ externalisation, and
- ❑ privatisation.

Offshoring is new buzz word for particular type of outsourcing. Offshoring Has pushed outsourcing up the agenda with media full of latest “offshoring” trends Essentially form of outsourcing where service is transferred to foreign provider

The process is controversial as media focus tends to be on massive savings achieved on employment costs, highlighting in particular examples of UK/US firms using Indian IT/call centre companies.

This was not the focus of discussions at the collective bargaining seminar not at the utilities standing committee. Although offshoring is having an impact in the sector, with some evidence of offshoring of call-centre operations by UK companies, it is not the main challenge.

Outsourcing is usually part of an employer's policy where they identify what they describe as "core" activities, which should continue to be carried out by the principal company, and "peripheral" activities which could be carried out by another organisation. However, across the public services a very wide range of activities have been outsourced and even in the utilities sector the range of services which have been outsourced suggest that, for some companies, "core" activities cover a very narrow range of services. There are examples of outsourcing of:

- ❑ network maintenance
- ❑ meter reading
- ❑ information technology
- ❑ call centres
- ❑ payroll
- ❑ training
- ❑ cleaning
- ❑ catering
- ❑ security
- ❑ accounting
- ❑ transport
- ❑ billing

Specific examples include:

- ❑ Finland – E.On Joensuu – grid maintenance
- ❑ Sweden – Telje Energi - administration and personnel
- ❑ Czech Republic – Prague Gas Co. – assembly, repair, inspection and testing of appliances
- ❑ UK – Thames Water – logistics and procurement
- ❑ France – EDF – meter reading
- ❑ Spain – Endesa – information technology services

### **Reasons for outsourcing**

Impact of outsourcing on collective bargaining and workers' pay and conditions and response to it can depend on aims of outsourcing. For example are employer's main intentions to:

- ❑ Simply cut costs to boost profits, stem losses or in response to public finance cuts?
- ❑ Rationalise activities to concentrate on making core business perform better?
- ❑ Take advantage of potentially greater expertise and resources of specialist company eg in IT?
- ❑ Is it part of overall corporate strategy – so is this a local management initiative or will it be tried throughout the company?

## **Issues raised by outsourcing**

As this report focuses on the impact of outsourcing on collective bargaining, it does not attempt to go into the effects on public services themselves. However, this may well be important issues to raise when trade unions have the opportunity to negotiate over an employer's plans for outsourcing.

For many public services, particularly the utilities, quality, reliability and public safety are central issues which must not be compromised. The risk of outsourcing is that direct management control may be removed over certain functions which may lead to problems if a proper monitoring system is not in place. There is also the question of skill needs and technical competence which may be lost to the principal company/public authority if a service is transferred to a new provider. These issues are addressed in the PSIRU report, "Restructuring and outsourcing of electricity distribution in the EU", May 2003.

However, the main issues that need to be addressed in terms of collective bargaining cover:

- Trade union rights
- Job security
- Pay and conditions
- Equality
- Health and safety
- Information and consultation

With outsourcing more often than not seen as a part of a policy of cost-cutting and achieving greater flexibility, the risk is that employees will pay the price through an erosion of their pay and conditions.

Services are transferred to contractors who try to win contracts by cutting back on jobs and the pay and conditions of their workers. Lower pay, poorer pensions and other benefits, weaker health and safety procedures and inadequate training provision have all been typical of much of outsourcing, particularly in the public services.

It is hardly surprising then that for most trade unions a policy on outsourcing starts, and often ends, with opposition.

However, while opposition might be the starting point, is this an adequate union policy and are all outsourcing companies bad employers? Are there cases, for example, where employers have more strategic view with aim to benefit from service provided by better-resourced organisation? Could a specialist company also provide better pay and conditions and career prospects for transferred employees? Furthermore, in situations of financial crisis could outsourcing also be alternative to other potentially worse cost-cutting options?

These are all questions that trade unions might want to address once they are consulted over the outsourcing process. However, this is the first battle to win – the right to proper consultation before the outsourcing decision is made. Unions need to

be told at earliest stage that outsourcing is under discussion and to get answers to the following questions:

- ❑ why is it under discussion?
- ❑ which activities will be affected?
- ❑ what is the timetable?
- ❑ which potential outsourcing companies are involved?
- ❑ which consultants have been used and what research has been done on the issue – what alternatives can be considered?

Evidently the level of opposition to outsourcing may rise or fall depending on the extent to which the employer responds to these questions and the kinds of answers he gives. If initial consultation reveals that outsourcing is an unavoidable or even preferred option then a process of negotiation/consultation should clarify:

- ❑ employees affected
- ❑ is there relocation/transfer choice
- ❑ details of outsourcers
- ❑ trade union rights/collective bargaining under new employer – can the takeover directive be applied here (see also EPSU merger and acquisition checklist)
- ❑ protection of pay and conditions – beyond legal minimum – right to return to original employer

Outsourcing implies that company will continue to have contractual relationship with outsourced service provider. Therefore trade union organisation in the original company can play a monitoring role and put pressure on the company to approach the outsourcing company if it fails to meet its commitments in terms of the transferred employees.

Ultimately there should be the possibility of bringing a service back in-house (“insourcing”) if new service provider fails to provide adequate service or meet commitments on workers’ rights and working conditions.

### **EPSU survey**

A survey of EPSU affiliates in the utilities sector suggests that it is possible to protect collective bargaining rights and pay and conditions in cases of outsourcing. The survey provides information on 25 cases of outsourcing from six countries – Czech Republic, Denmark, Finland, Germany, Slovakia and Sweden.

Affiliates were asked in particular to provide examples of best practice and so it should be emphasized that the survey is not necessarily a reflection of what normally happens in cases of outsourcing.

In all but one of the 25 examples unions were informed in advance of the plan to outsource and negotiations over jobs and pay and conditions were possible in 22 cases. Guarantees on jobs and pay were harder to achieve but unions did get them in 18 of the 25 cases.

In 21 of the examples union representation continued although in a couple of cases this meant workers joining a new union. Collective bargaining rights were maintained in 18 of the 25 examples.

In practice, it was not clear that protection of pay and conditions always worked. Less than half of the 25 (12) could confirm that pay and conditions had not worsened since outsourcing. However, in six cases there was no response to this question. The impact on health and safety was also difficult to assess with nine non-responses. In 14 of the remaining 16 examples health and safety had not deteriorated.

In only four cases was the level of training maintained. Although again there were eight cases where no response was given.

Some of the comments (see page 7) from the 25 cases reflect what unions have been able to achieve but also some of the challenges they have faced. In the three German companies, for example, pay and conditions were guaranteed and in two cases workers had a right to return to the original employer. However, the e.on Kernkraft case also highlights how a two-tier workforce is created when the outsourcer takes on new employees on poorer terms and conditions when workers transferred from the original company leave their jobs.

The Swedish examples are also interesting because they make clear that things do not necessarily run smoothly even when workers are transferred to publicly owned companies.

### **A co-ordinated campaign?**

This survey and the initial discussion within EPSU has provided some useful background on outsourcing and the challenge now is to see to what extent affiliates can now take part in some form of co-ordinated campaign. This could be one where affiliates approach their employers on a co-ordinated basis, particularly multinationals with a European works council, and where EPSU can put similar demands to the electricity employers' organisation, Eurelectric, via the social dialogue.

To further the discussion EPSU has drawn up a draft code of practice and a draft agreement on outsourcing. The code of practice is aimed at Eurelectric with a view to getting electricity employers to agree to minimum standards on information and consultation when considering outsourcing. The draft agreement is slightly more specific and is aimed at individual companies. These documents have been translated in to the main EPSU languages and circulated among affiliates in the utilities sector in preparation for a discussion at the next standing committee in spring 2005.

## Outsourcing and collective bargaining – EPSU survey summary table

Company	Service outsourced	Info	Neg	Guar	Jobs	Rep	CB	P&C	H&S	Train
<b>Czech Republic</b>										
CEZ	Distribution	Y	Y	Y		Y	Y			N
Pražské plynárenské	Construction, redevelopment of gas networks	Y	Y	Y	17	N	N			N
Pražské plynárenské	Leasing gas appliances, operating and renovating boilers	Y	Y	Y	43	Y	N	N	Y	N
Pražské plynárenské	Hardware/software leasing, data process. Training, consultancy	Y	Y	Y	35	Y	N	N	N	N
Pražské plynárenské	Assembly, repair, inspection and testing of gas appliances	Y	Y	Y	148	Y	N	N	Y	N
Technicke sluzby Melnik	Municipal refuse collection	N	N	Y	30	N	N			N
<b>Denmark</b>										
NordRen	Waste management/collection	Y	Y			Y	Y	Y		
Affaldsregion Nord	Waste management/collection	Y	Y			Y	Y	Y		
R98	Waste management/collection	(Y)	(Y)	(Y)		Y	Y	N	N	
Nyborg Forsyning A/S	Public utilities in general	Y	Y	Y		Y	Y	N	N	
Odense Renovations-selskab A/S	Public utilities in general	Y	Y	Y		Y	Y	Y		
Entreprenørgården A/S	Public utilities in general	Y	N	N		Y	Y			
<b>Finland</b>										
Haapavesi Waste Water Plant	Whole operation	N	N	N	<10	N	N			
Hameenlinna town + five councils	All water and sewerage services	Y	Y	Y		Y	Y	N	N	Y
e.on Joensuu	Grid maintenance	Y	Y	N		N	N			
<b>Germany</b>										
e.on Kernkraft	General services	Y	Y	Y	265	Y	Y	Y <sup>1</sup>	N	Y
GEW Koln	Telecoms	Y	Y	Y	30	Y	Y	N	N	Y
Stadtwerke Kiel	IT-Services	Y	Y	Y	31	Y	Y <sup>2</sup>	Y+N	N	Y
<b>Slovakia</b>										
ZSE	Construction assembly activities	Y	Y	N	500/100	Y	Y	Y	N	N
ZSE	Meter calibration	Y	Y	N	100/25	Y	Y	Y	N	N
<b>Sweden</b>										
Stockholm Entreprenad	Road and pavement work	Y	Y	Y		Y <sup>3</sup>	Y	N	N	N
Stockholm Vatten	Security and emergency services	Y	Y	Y		Y <sup>3</sup>	Y	N	N	N
Norr Vatten	Security and emergency services	Y	Y	Y		Y <sup>3</sup>	Y	N	N	N
Telje Bostader	Personnel management and administration	Y	Y	Y		Y <sup>3</sup>	Y	N	N	N
Telje Energi	Personnel management and administration	Y	Y	Y		Y <sup>3</sup>	Y	N	N	N

1 Yes for new employees 2. Yes only for outsourced 3. Employees joined new union after transfer

Key to columns – Info – information provided in advance; Neg – negotiations over outsourcing; Guar – job guarantees; Jobs – number of jobs affected/lost; Rep – continuing trade union representation; CB – continuing right to collective bargaining; P&C – worse pay and conditions; H&S – worse health and safety; Train – training provision maintained

## Summary of comments from the survey

**e.on Kernkraft** - Jobs and conditions are guaranteed for the outsourced employees. Employees who leave are replaced by others from another e.on company with lower conditions. The aim of ver.di and Works Council is to integrate them in the overall collective agreement. Negotiations have started.

**GEW Köln** - Starting with 30 workers, Netcologne the outsourcing company now has 500 employees. It has a collective agreement with ver.di at company level. A transfer agreement into the new company agreement was negotiated too. The 30 affected employees have a right to return to GEW Köln AG (used by one).

**Stadtwerke Kiel** - Protection of all social standards by Stadtwerke Kiel AG. Right to return to SW Kiel AG. Protection of Works Councils responsibility. Opportunities to gain new market shares. Protection of jobs in Kiel (last chance before the majority shares in SW Kiel AG are purchased by MVV).

**Pražské plynárenské** - When operations were split off from the parent company Pražské plynárenské a.s., the employees of the new companies continued to be members of the union operating at Pražské plynárenské a.s. From then on this union acted on their behalf with the employer with the aim of concluding a collective agreement. Up to now they have not been successful.

**CEZ** - The outsourcing process at CEZ is currently taking place. By 2006 about 12 subsidiary companies will have been created from the 5 regional distribution companies controlled by CEZ. Each new company will perform one single support activity, (projections, network management, IT, customer services etc.), but covering the whole of the Czech Republic.

The unions are beginning negotiations with CEZ management, with the aim of providing the same working and salary conditions for the employees, who will transfer to the subsidiary companies. CEZ management is prepared to accept a union proposal, which will safeguard basic conditions (but by no means all of them), which will be binding on the new subsidiary companies. The agreement will be signed in the next few days. It is not a collective agreement because some new companies have not yet been set up. Negotiations with CEZ management will provide safeguards for the representatives of the original regional distribution companies and the management of the ECHO Trade Union.

Why was it not possible to use a collective agreement to a greater extent? Because, in accordance with current legislation a wider agreement applies only to employers who are members of the employers association. In the meantime nobody guaranteed that the new Subsidiary companies would be members of the employers association.

**Stockholm Entreprenad AB** - A collective agreement has been drawn up between Stockholm Stad and SKTF covering outsourcing contracts involving the local government-owned company Stockholm Entreprenad AB. Members at Stockholm Entreprenad AB who transfer to the new company (PEAB) have the right to return to the employment of Stockholm Stad within the first two years, if they are not happy, or feel a lack of career progression, at PEAB.

**NordRen and Affaldsregion Nord** - Traditional examples of outsourcing where employment conditions were only partly maintained and only through pressure from the unions.

**R98, Nyborg Forsyning and Odense Renovationselskab** - Three examples of alternatives to private outsourcing where companies are publicly owned but separate from the councils. There have been some difficulties but in general employees have maintained public sector working conditions.

**Entreprenørgården** - In fact, a case of insourcing where a publicly owned company has taken over from a private company and where there were problems because the publicly owned company was unwilling to take over the employees from the private company.

## **Draft code of practice on outsourcing**

EURELECTRIC, EPSU and EMCEF support the following code of practice on outsourcing and urge their member organisations to abide by the code when dealing with this issue at company level.

Outsourcing is taken to be any process that results in an activity being transferred to a new organisation, whether this involves the contracting out of an activity to another company or the hiving off part of the company as a separate economic entity.

Employers should inform and consult with unions/works councils at the earliest stage if the outsourcing of any of business activity is under consideration. They should also provide unions/works councils with copies of reports from consultants or advisor on the outsourcing process.

Employers should try to ensure that outsourcing is only considered as part of a long-term strategy to ensure continuing prosperity or survival and should not be a short-term tactic to cut jobs and undermine the pay, conditions and collective bargaining rights of its employees.

Unions/works councils acknowledge that in certain circumstances outsourcing may be a legitimate part of an employer's strategy to survive or prosper in the long term and may therefore be justified in terms of job security.

Employers considering a plan to outsource should strive to consult with unions/works councils at the earliest stage over the reasons for the proposal, setting this in the context of their overall corporate strategy.

Unions/works councils should be allowed an opportunity to question management over the proposal and over potential alternative strategies. Employers should provide unions/works councils with relevant data about the outsourcing proposal including information on the company or companies likely to be taken on the outsourced activity.

Unions/works councils should be given the opportunity to call for independent research and advice if it needs it to help assess the proposal.

If the unions/works councils believe that outsourcing will undermine job security and result in a worsening of employment conditions then the employer should consult in good faith over alternative proposals.

If unions/works councils agree that outsourcing is a justifiable policy in these circumstances then it should establish a further period of consultation with the employer over the actual process of outsourcing.

The employer and unions/works council should agree a timetable leading up to outsourcing which will allow for proper consultation and enable the unions/works council to compare in particular the current rights and working conditions of the employees affected and their future rights and conditions as set out by the potential outsourcing company or companies.

The employer and unions/works council should endeavour to ensure that the pay and conditions of workers to be transferred are protected.

As the very minimum the employer will ensure that it abides by any national or European legislation governing the transfer of employees but will also endeavour to do more to protect the rights and conditions of transferred employees if these are not specifically covered by the legislation.

If, following the transfer, the union/works council representing the transferred workers complains that the outsourcing company is failing to meet its commitments then this may be taken up by the original employer and unions/works council with the employer encourage to use its contractual relationship with the outsourcing company to protect the rights and conditions of the transferred employees.

EPSU, EMCEF and EURELECTRIC will agree a process and timetable to review and evaluate the application of this code of practice

## **Draft agreement on outsourcing**

Between UNION/WORKS COUNCIL and COMPANY.

Outsourcing is taken to be any process that results in an activity being transferred to a new organisation, whether this involves the contracting out of an activity to another company or the sale of part of the company as a separate economic entity but one which continues to supply a service to the original company.

The COMPANY agrees to inform and consult with the UNION/WORKS COUNCIL at the earliest stage if it is considering the outsourcing of any of its business activities.

The COMPANY agrees that outsourcing should be only considered as part of a long-term strategy to ensure its continuing prosperity or survival and should not be a short-term tactic to cut jobs and undermine the pay, conditions and collective bargaining rights of its employees.

The UNION acknowledges that in certain circumstances outsourcing may be a legitimate part of the COMPANY's strategy to survive or prosper in the long term and may therefore be justified in terms of job security.

If the COMPANY is considering a plan to outsource then it commits itself to consult with the UNION/WORKS COUNCIL at the earliest stage over the reasons for its decision, setting this in the context of its overall corporate strategy.

The UNION/WORKS COUNCIL will be given an opportunity to question management over the proposal and over potential alternative strategies. The COMPANY will provide the UNION/WORKS COUNCIL with relevant data about the outsourcing proposal including information on the company or companies likely to take on the outsourced activity, together with any reports from consultants or other advisors on the outsourcing process.

The UNION/WORKS COUNCIL will be entitled to call for independent research and advice if it needs it to help assess the proposal.

If the UNION/WORKS COUNCIL believes that outsourcing will undermine job security and result in a worsening of employment conditions then the COMPANY will consult over alternative proposals.

If the UNION/WORKS COUNCIL agrees that outsourcing is a justifiable policy in these circumstances then it will establish a further period of consultation with the COMPANY over the actual process of outsourcing.

The COMPANY and UNION/WORKS COUNCIL will agree a timetable leading up to outsourcing which will allow for proper consultation and enable the UNION/WORKS COUNCIL to compare in particular the current rights and working conditions of the employees affected and their future rights and conditions as set out by the potential outsourcing company or companies.

The COMPANY and UNION/WORKS COUNCIL will endeavour to ensure that the job security and pay and conditions of workers to be transferred are protected.

If, following the transfer, the union/works council representing the transferred workers complains that the outsourcing company is failing to meet its commitments then this will be taken up by the COMPANY and UNION/WORKS COUNCIL, and the COMPANY will use its contractual relationship with the outsourcing company to protect the rights and conditions of the transferred employees.