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Water services management changes between private operators and public structures: transfer of employees and technical means

Benoit TURPIN

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Water services management changes between private operators and public structures: transfer of employees and technical means

> Benoit TURPIN turpinbenoit.run@gmail.com

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ABSTRACT

This synthesis concerns the management of water services in France. It aims to offer the main elements to consider for preparing and anticipating as well as possible the transfer of competences from private management to public management and vice versa. A focus will be made about the transfer of the employees and their integration in the new company (public or private). We will both, the public and on the private side on this article. In this way we will see which elements are important according to both points of view.

Key words: Private management ; Public management ; Transfer of competences ; Transfer of employees

RESUME

Ce travail porte sur le transfert de compétences pour la gestion des services d'eau en France. Il présente les principaux éléments nécessaires à une bonne préparation du transfert, à la fois lors d'un retour en régie ou vers une délégation de service public. Une attention particulière est donnée au problème de gestion du personnel à transférer. Quelque soit le sens du changement, vers une régie ou vers une DSP, les points de vue de la structure publique et de l'entreprise privée sont analysés.

Mots-clés : Délégation de Service Public ; Régie ; Transfert de compétences ; Transfert de personnel

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INTRODUCTION

Changes in the administration of water services are more current to public management during these recent years in France. Between 2008 and 2011, around 60 additional public structures (regies) have been counted (Eaufrance, 2013). Although the number of delegation to private companies for the management of water services is decreasing (from 426 in 2008 to 406 in 2011), contracting a delegation is still valid. The choice of management may be motivated by various reasons (Chaussade, 2012; Observatory of Public Private Partnerships, 2013). The main reasons for returning to public management ("regie") are the political will, the desire to display a maximum of transparency for consumers or bad relations with the private delegate. In the other direction, a delegation to a private company is generally justified by technical or financial gaps in the public structure. The choice of management should be done by the public authority according to their objectives and especially within their means (technical, financial and human). A public authority which wants to create a "regie" must be able to remunerate managers and technicians hired entirely for the management of the water service. It must also have tangible and intangible resources to the operation of the service.

There is now a real debate about the choice of water management. Although it is essentially political and ideological, it is organized around technical arguments. Network performances, price of water, the responsiveness of the service, customer relationships ... could have different efficiencies depending of the mode of management.

However, water service management changes are rare because of the technical, administrative and political complexity of the transfer (AgroParisTech, 2012). The example of the Syndicat des Eaux d'Ile-de-France (SEDIF) illustrates the failure of a return to public management. Indeed, the market is held by a delegate from the early 1920s, historical links were established between the private company and politicians. This proximity could be the cause of this failure (Valin, 2007).

This work aims to synthesize how to prepare the transfer of a water service, in both directions (from private to public and vice versa). It appeared interesting to parallel the views of public and private structures. This study shows in which manner each structure anticipates and lives the transfer, if it gives way the skill or if it takes it. A particular focus is made on the transfer of employees.

Two major questions arise about this study:

- How private or public structures prepare the transfer of employees and technical means?
- Why the integration of the new employees into the new corporate culture is an essential element?

As a first step, the terms of the negotiation between the private and the public before the transfer of skills will be detailed (whatever the direction of the transfer). It discusses the conditions for the transfer of human and material resources. Then, the integration of the new employees in the new structure (private or public) will be discussed. The main aspects studied will be the consequences of a change of employer.

SOME DETAILS

In this paper, the concept of "regie" refers to the direct management by the head of the public water service. That is to say, in which all the water service deliveries is provided by the public structure. The term "DSP" (or delegate) is the private company in charge of the water service.

ANTICIPATE THE TRANSFER: THE TERMS OF THE NEGOTIATIONS BETWEEN THE PRIVATE OPERATOR AND THE PUBLIC STRUCTURE

The decision to delegate a water service to a private company is sometimes considered as a "privatization of public services" with a negative connotation. This type of situation can dive negotiations in a non-productive work environment. These judgments must now be banned and only the objectives and the means of the public authority can motivate to keep the service in-house or delegate it. Many projects of delegation of water services are abandoned because they are not accepted by the citizens (Babusiaux and Lucas de Leyssac, 2005). It can force the public entity to cancel its decision to transfer the water service to a delegate. The example of Grenoble illustrates the power of citizen movements. In 1999, these movements have canceled the contract of delegation (Valin, 2007).

TRANSFER TO A PRIVATE OPERATOR: HOW TO PREPARE THE MANAGEMENT OF EMPLOYEES?

During a delegation of a water service to a private delegate, the question of employees management is paramount. What to do with the employees working for the "regie"? The delegate has to suggest employment offers to the "regie"'s employees (those no titular of the public function). Although, the recovery of employees assigned to full-time service is a legal obligation, the private operator is free to propose different jobs or positions to the transferable employees. If a employee refuse an employment suggestion, they risk dismissal in accordance with the General Local Authorities Code (National Assembly, 2000). Negotiations between delegator and delegate take here all their importance in order to achieve a favorable situation for the private operator, for the public structure and for the transferred employees.

Information for the delegate and the transferable employees

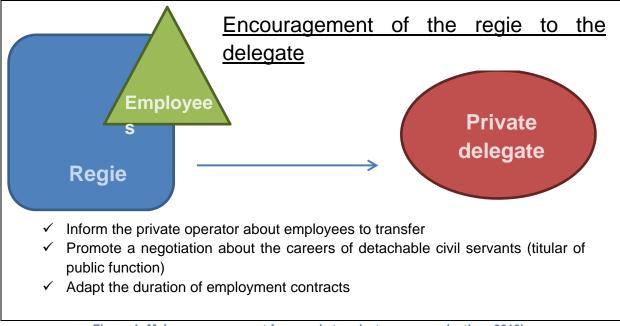
To facilitate the transfer, the public authority must inform the delegate on the employees to transfer. The future delegate must be aware from the outset of the project about number and characteristics of employees that will be transferred or detached (for titular of the public function). This information may be given in the delegation contract. Many points must be addressed as the number of employees to transfer, their experience / seniority / qualifications, their statutory advantages ... (le Chatelier et al., 2007) In this manner, the delegate will have all information future to anticipate the employees management. It is also important to plan the transition to a private delegate by informing the concerned employees enough early. Generally, these employees or their representatives like to be involved in the process before the decision of externalization (Lavarde and le Chatelier, 2012). The externalization refers to the transfer of the water service from a public structure to a private operator.

This step would allow collecting the views of the transferable employees at the beginning of the process.

Facilitate the transfer of employees

The management of employees contributes widely to a successful transfer of a water service. Good negotiation on this subject can help to achieve a good situation for all three parts that are the public structure delegating its skill, the private operator and the transferred employees. The different actors involved can make a deal together about the transfer of employees. Incentive arguments among these actors can be numerous and more or less objective. A study has identified the most simple and effective solutions to implement a climate of trust (Babusiaux and Lucas de Leyssac, 2005).

• How the regie may encourage the delegate to enroll its employee?



The following diagram summarizes the main ideas of this work:

Figure 1: Main encouragement from regie to private company (author, 2013).

Information on employees to transfer allows the delegate to anticipate the management of human resources. It depends of the number and the characteristics of employees to transfer.

The case of detachable civil servant is to study by both structures (public and private). The aim is to follow and to plan their careers.

Finally, the mentioned study did appear that a bad evaluation of the employment contracts duration is a problem. In fact, it is the main cause of an excess of employees and of increasing dismissals. The duration of contracts with the transferable employees must be adapted. This not to influence another possible transfer of the water service (to another private operator or to a public structure). That is to say that the duration of employment contracts must be compatible with the end of the delegation contract.

• How the ex-"regie" may encourage its employees to join the delegate?

Another study completes the previous and details how the ex-"regie" may encourage its transferable employees to join the future delegate (Babusiaux and Lucas de Leyssac, 2005; le Chatelier et al, 2007). The public authority may also take the employees of the ex-"regie" and put them in another public service (transport, school, waste management ...), with the agreement of the employees concerned. The following diagram summarizes the main ideas of this work:

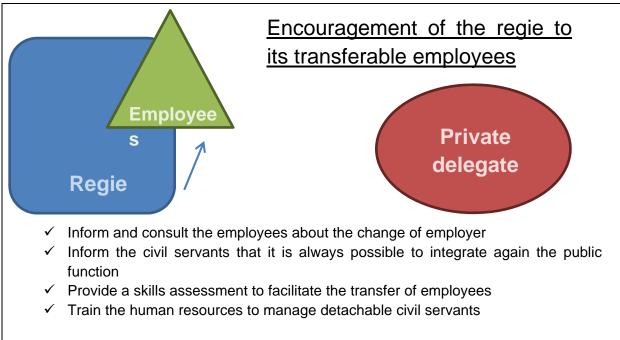


Figure 2 : Main encouragement from "regie" to its employees (author, 2013).

The information of employees (or their representatives) must be done before, during and after the formal decision of externalization. It must communicate about the area concerned, about the timing and any other information which may affect the personal situation of an employee (salary, contracts, benefits ...).

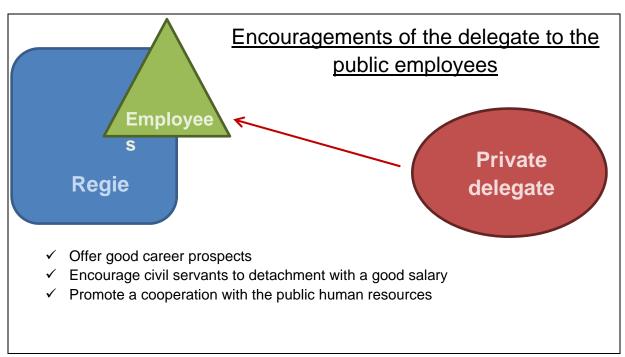
Transferable employees have to be consulted and their expectations should be taken into account. This in order to reassure them, to facilitate the transfer of employees and their integration into the new company.

This facilitation can be improved by the prevision of a training program aimed to achieve a skills assessment. Funding for this program must be considered from the begin in the project budget.

Finally, the human resources department of the public structure must be trained to the management of detachable civil servants. This allows to keep a link with civil servants who will work in the private delegate's structure.

• How the delegate may encourage staff to join the board?

Finally, during the change of management mode, the private operator has many interests to encourage the public employees to join its staff. Based on experiences feedbacks, proposal of



good careers prospects is a solution to prefer. Here is the summary of the results of the same study as before:

Figure 3: Main encouragements from the delegate to public employees (author, 2013).

To promote negotiations about the transfer of employees, it is important for the private operator to plan in training of its new staff. This is to offer them real career prospects. A new contract is able to promote the integration of employees if it meets two conditions:

- Require the same skills as the previous contract
- Being competitive with the equivalent contract that the former employer could offer.

On detachable public employees side, a financial incentive is often effective for their agreements (because the agreement of a civil servant is obligatory for its transfer). This financial incentive aims to cover potential losses in nature, reducing holidays, or hardening of the working hours. This increasing of salary could theoretically cause problems during the return of these agents in the public structure. A wage gap too large would complicate the return.

Finally, the cooperation of the private operator with the human resources department of the public structure helps for following detachable employees and their careers.

Organizational efforts necessary for public structure

Although the private operator is generally endowed with competent services in terms of personnel management, the ex-regie may have administrative problems and human management problems (Observatory of Public Private Partnerships, 2013).

• Reducing staff to manage:

To minimize these difficulties, the former public employer has to pay a particular attention to the management of jobs and skills. Limiting recruitment during the negotiation period of the

transfer is a good way to anticipate the transfer of employees and reduce financial charges. Similarly, facilitate the retirements generates less personnel management (Babusiaux and Lucas de Leyssac, 2005).

If the public structure makes employment reclassifications within it, it is essential to coach every employee in this case. The employee appreciates being informed and consulted to avoid any sense of a "recycled" or "useless" employee (le Chatelier et al., 2007). This influence on the employee's behavior, in the efficiency of the staff in general and in the image of the structure.

• Using an APO :

In case of uncertainty about its management capacity, the public structure should not exclude the possibility of hiring an Assistant for Project Owner (APO). Note that the APO is only there to clarify the situation and the decision-making power remains with the human resources department of the public authority. This public authority cannot therefore make lose interests in the problem.

Theoretically, the public structure could recruit a specialist of externalisation issues. This type of job is still rare today (Babusiaux and Lucas de Leyssac, 2005). This specialist would be responsible for following the transferred employees (and detached employees) and must act for the conversion of retained employees.

It is often forgotten that appeals are possible in case of difficulties for human management. If the number of employees to reclassify becomes unmanageable or if there are to much disagreements against the transfer to a private company, the externalisation project may be delayed. There is no need to rush a delegation (le Chatelier and Lavarde, 2012).

RETURN TO PUBLIC MANAGEMENT: HOW TO PREPARE THE MANAGEMENT OF EMPLOYEES?

In the case of a return of the water service to public control, the recovery of the employees of the transferred service is required, according to the General Local Authorities Code (National Assembly, 2000). The terms of negotiation and consultation between the delegate and the public authority are highly dependent on local contexts and cannot be ignored (Pigeon, 2012). For an optimal transfer, a particular attention should be paid to the transferable employees (or their representatives). After negotiation, the public authority, the delegate and the transferred employees should be winners. The law also allows a one-year extension for some delegation contracts, according to the General Code of Local Authorities (National Assembly, 2000). This to avoid haste of transfer procedures.

Goals of the social expertise

By carrying out a social expertise, the public authority which takes back the water service collects information about the transferable employees. This information deals with the structure

and the diversity of remunerations, with the work conditions ... (le Chatelier et al., 2007). This expertise also allows anticipating the future costs relating to the transfer of employees. Two documents help the public authority to lead this expertise: the Annual Reports of the Delegate (ARD) and the specifications (in the contract signed at the time of the delegation).

Each employee must be informed during this expertise to integrate it in a healthy way in his new structure. That is to say, knowing how their seniority was taken into account, what are the differences with their previous salaries, what are the components of their new salaries, what are the possible careers...?

Anticipate the return to public management

It is therefore important to anticipate from the signing of the DSP the possibility of returning to a regie at the early beginning, when the delegation contract is signed (to a private company). The public authority should define the social information that the private delegate must provide via the ARD (salary levels, benefits in kind ...). In the specifications associated with the contract of delegation (to a private company) the obligation for the private operator to share some information must appear.

Consultation with transferable employees

During a transfer to a regie, transfer of employees is mandatory. However, an exchange and a discussion between the leaders of the delegated company and their employees will improve the social acceptability of the transfer. The boss of the company has to inform the employees (or their representatives) before a transfer, it is a legal obligation of the Labour Code (National Assembly, 2008). Different experiences have shown that the transferable employees wish have information primarily on the chronology of the transfer, on the nature of future contracts, on remuneration and on career advancement (le Chatelier et al., 2007).

The consultation of employee representatives (private side) is more relevant if it is conducted throughout the project at all stages of the proceedings. The key moments are before the official decision of transfer and when specific conditions have been determined.

It is important to note that the employees may not be transferred if there is agreement between the private operator, the public authority and the employees themselves. Otherwise, the transfer is automatic and a disagreement from employees can cause the end of their contract without compensation, according to the Article L1224 of the Labour Code (National Assembly, 2008).

The communication between the leaders of the public authority (which takes the water service management) and its own agents is less important than in the private operator. This can be done for example through technical committees. Indeed, the Act of 1/26/84 requires the consultation of the committee on any matter relating to "the organization of government".

RETURN TO PUBLIC MANAGEMENT: THE DIFFICULTIES TO TRANSFER TECHNICAL RESOURCE

During a return to public management, the infrastructures of the drinking water service are not transferred. The public authority stays most time owner of these during the delegation. Here, infrastructures are all material objects related to the operation of the service (pipes, pumps,

tanks, water treatment plants ...). However, a problem arises when we speak about the intangible objects of the service (software ...). The transfer of the water service to a private delegate is not a major problem because private water companies are generally equipped in terms of software (customers management, networks management ...), structures and competent technical staff (Observatory of Public Private Partnerships, 2013).

Nowadays, there is little information about the transfer of technical materials and immaterials during a transfer of a water service management. Indeed, experiences feedbacks remain relatively focused on the example of Paris. Thereafter, some ideas will be also illustrated by this example.

Negotiate the acquisition of the private delegate's property

The delegate buys and develops management tools with its own account (billing/operation software, technical databases, subscriber management ...). Without these tools, the operation of the water service cannot take place. The transfer of these tools is essential build quickly a responsive and efficient regie. Cooperation of a delegate is important. Without this cooperation, it becomes difficult for the public authority ensure the continuity of the water service (Sinai, 2013).

To facilitate the transmission of the intangible tools, the public authority can provide audits or analyzes of the delegate's management systems (internally or through consultants). The aim of these audits is to ensure that the tools currently operated by the delegate are transferable free of charge to the regie. If they are developed by the delegate (with its financial means), its agreement is essential for the transfer. Only an early negotiation between the private delegate and the future regie is able to solve this problem (Babusiaux and Lucas de Leyssac, 2005). It is important to not fall into a frontal opposition where the public authority would seek to recover all the work of the delegate and where the delegate would make retention of information. In case of disagreement, the tribunal's decision is generally based on the delegation contract and its definitions of "transferable resources". To avoid a tribunal action, agreements are generally found by financial compensations to the private delegate, or by hiring it for the operation and the maintenance of these specific tools.

The importance of data processing systems

These are computer systems for customer/billing/network management which cause most of problems during a return to public management. Indeed, they are often owned by the delegates and there are few (or no) alternatives on the market. In general, water companies develop and operate their own internal tools without making them free available (Sinaï, 2013). This highlights the question of the autonomy of a regie.

The case of sensitive files

Negotiations about the transfer of a water service does not relate only to the beneficial elements that can be human and technical means. The transfer is often an opportunity to get rid up some disturbing issues with the service (Pigeon, 2012; Sinai, 2013). The delegator (private delegate or public authority according to the transfer direction) may seek to break free from certain constraints or legal obligations. What happens when the transfer takes place in the middle of a contract for various heavy works (network rebuilds ...)? It is essential to analyze

these issues in the negotiations. The actors do not let themselves "trap" by signing for administrative/financial/legal constraints...

MAKE THE TRANSFER: THE INTEGRATION OF THE EMPLOYEES IN THE NEW STRUCTURE

TRANSFER OF EMPLOYEES TO PRIVATE COMPANIES

During a transfer to a private company, the integration of public employees in the private company is largely influenced by the behavior of the ex-regie and the new delegate. Despite previous negotiations, the reactions of each party can still evolve (Sinai, 2013). To not freeze the transfer, both actors have to accept and facilitate the assignation or the recovery of employees. Thus, it is essential that the ex-regie and the new delegate agree on the following points:

Table 1: Delegation to private operator, main actions to facilitate the transfer of employees

Actions on public side	Actions on private side
 Accept and facilitate the transfer of contractual employees (no titular of the public function) Promote the detachment of titular employees Reclassify or dismiss titular emloyees without offer by the nex delegate 	 Hire contractual public employees Dismiss employees which refuse an employment offer No obligation to suggest employment offer to titular employees

The case of contractual employees (no titular of the public function)

During a transfer to a private operator, the transfer of employees can be assimilated to a simple change of employer. This is valid only if the staff of the authority concerned is subject to private law. This is usually the case of public water services managed in an autonomous regie.

Also, during a delegation, the transfer of employees concerns only the staff assigned to the water service in full-time, according to the General Code of Local Authorities (National Assembly, 2000). It means employees that the entire time work is done for the water service in the territory concerned. However, some agents are widely involved in the operation or maintenance of the service without be assigned to 100 %. What is the future of this staff? Are they converted? ... These questions could be asked about these employees with particular status during a transfer of a water service.

The case of civil servants (titular of the public function)

Generally, a change of employer is well accepted by civil servants. However, the benefits of their status are not negligible and it is often difficult for the private operator to compensate it otherwise than by an increase of remuneration (le Chatelier and Lavarde, 2012). Remember that these titular employees are not subjected to an automatic transfer and that their agreements are essential to be transferred.

The public structure is most often forced on this issue. If civil servants refuse an offer proposed by the private delegate or if it does not offer a post, the ex-regie must reclassify them in the public structure, according to their grades. Sometimes, this solution is impossible and the public structure has to proceed with dismissals for cause of removal of employment, according to the General Code of Local Authorities (National Assembly, 2000). In all cases, the cost for the public structure is real, especially if there are redundancy costs.

To optimize the integration of civil servants, several solutions are proposed:

- Detachment
- Provision
- Availability

The private operator, the public structure and the concerned civil servants have to make a deal about the best solution between these three possibilities. The key is to anticipate their career advancement without "trap" them in a system where the reintegration into public service would be uncertain (le Chatelier and Lavarde, 2012).

• Detachment characteristics:

This method seems to be the most fluid and the most advantageous of the three mentioned above. In fact, it allows the public structure to reclassify its civil servants without reorganization or dismissals. The private operator can benefit a field experience at a lower cost. And the employee can see new employment and career prospects. In addition, the civil servant concerned continues to benefit his rights in the public employer (advancement and retirement) while being subject to the new private employer (le Chatelier et al., 2007).

The agreement of the civil servant is essential to be detached. An information stage about their rights and duties is also a legal obligation. Finally, the new remuneration must not exceed more than 15 % their original salaries. This 15% rule, set out in the Labour Code (National Assembly, 2008), aims to not block the return of civil servant in the public service.

• Provision characteristics:

Another solution for the transfer of civil servants to private companies is the provision. In this case, civil servants keep their employment and remuneration while carrying out his job out of his original public structure. However, the provision is subject to reimbursement by the delegate of services done by the employee (le Chatelier et al., 2007). This solution is more binding for the public structure which continues to pay an employee (which it no longer benefits from the services). It is also more binding for the private delegate which must anticipate and estimate the amount of reimbursement for the services of the agent.

• Availability characteristics:

Availability corresponds to the situation where civil servants are integrated in the private company for a period of 3 years, renewable 3 times. They are paid by the private company and have no longer the rights to the advancement and retirement of the public function (le Chatelier et al., 2007). It seems that this solution is given as a last resort by public structures in big trouble for staff management.

RECOVERY OF PRIVATE EMPLOYEES BY THE REGIE

In the case of returning to public management, the transferred employees' situation is still under the private law. It should not arise major problems during the transfer process. Employees' recovery is automatic except for the director and the accountant. This case will be specified later.

However, the cooperation of the ex-delegator and the new regie is essential to facilitate the employees integration process. It is essential that they agree on a minimum the following points (Pigeon, 2012; Sinai, 2013):

Actions on public side	Actions private side
 Suggest employement offers to the transferable employees Inform its detached civil servants about a possible return in the public structure Dismiss transferable employees who refuse an employment contract. 	 Accept and facilitate the transfer of employees affected to the former delegated service Remunerate detached civil servants to the end of their contracts if they are not returned to the public structure

 Table 2: Return to public management, main actions to facilitate the transfer of employees

Social considerations of the new public structure

The integration of employees in the new regie can theoretically be almost transparent if the public authority carried out a good social expertise before transferring employees (Babusiaux and Lucas de Leyssac, 2005). This anticipation work enables to keep at least the advantages of transferred employees (social security schemes, retirement/unemployment contributions, sick holidays...).

Concerning remunerations, the new public structure may have difficulty to maintain them while offering employment contracts to transferred employees. In case of disagreement with an employee, if he or she refuses the contract offered, this employee may be dismissed by the regie. The public authority must try to maintain as much as possible the entire remuneration of each employee transferred.

Transferred employees' point of view

The change of employer inevitably leads to a disruption of habits and culture for the transferred employees. The good integration of staff in the new company makes over time.

Furthermore, the understanding of employees in their professional future seems to be divided between curiosity and anxiety. Ignorance of the organization of the public structure may increase these feelings (Sinai, 2013). The phase of information and consultation needed to prepare the transfer can be a solution to this problem. It is important to remember that the Labour Code applies within water services. This is not obvious to all private sector employees affected by the transfer (they could imagine a categorical change in their working conditions).

Difficulties to find a place for every employee

Regie and private delegate have an interest to employ experienced and efficient staff. For its part, the delegate has the opportunity to maintain the "good employees" by offering them employment opportunities before the decision of transfer. For example, the act to place

employees elsewhere or for wider missions excludes them from the list of people automatically transferable (in this manner, the employee's agreement become required for any transfer). This comes at the expense of the regie which is in a situation of loss of knowledge and experience (Barraqué, 2012).

In the example of return to regie of the city of Paris, the delegate has acted to maintain its technical and management engineers/executives (coaching managerial, engineering, technical framing, maintenance policies, monitoring systems, management of functional materials, ...) (Pigeon, 2012; Sinai, 2013). The new regie is also forced to hire staff without detailed knowledge of the network. This situation is even more embarrassing if it happens after the social expertise provided by the public authority to optimize its management. In addition, it is generally difficult for a new public structure to make interesting job offers for executives and other employees of the private operator. Indeed, the youth of this regie does not generally allow it to suggest more attractive employment offers than those of big private water groups (Pigeon, 2012).

The special case of the director of the former delegated service

The public structure which takes the water service must comply with all employment contracts in progress. The contract of the director who is not on the list of automatically transferable personnel must be taken in account too. The authority is obliged to offer a contract to the former director and to give him or her a priority to occupy this job in the future regie. (le Chatelier and Lavarde, 2012). If the former director refuses this contract, he or she is dismissed by the public authority under the rules of private law. If the regie does not offer him or her a contract or refuses to use it as a priority, there is no realistic cause to dismiss him or her. This is accompanied by serious financial consequences for public structure.

CONCLUSION

Regie and private operator are organized differently for the management of a water service and both have their own goals and interests. During a change of management mode, these differences are the main obstacles to the negotiation before the transfer of employees and technical resources.

It was clear from this work that the management of transferable employees needs inevitably cooperation between public and private operators. Throughout the project, this cooperation is accompanied by consulting the concerned staff.

However, the definition of "transferable employee" remains unclear and can be interpreted in several ways. In a return to public control, the former private delegate sometimes seeks to maintain its executives by reclassifying them into the company. This is a problem for the continuity of the water service recovered in regie. How to ensure an efficient service with no experience or knowledge of the network? During a delegation to a private operator, the problem arises for the professional development of the regie's engineers. Indeed, they are not automatically transferable and their service disappears. How can they imagine the rest of their career?

Concerning the transfer of technical means, there are now little literature on the subject. However, current feedbacks show real difficulties of cooperation between regies and delegates (Sinai, 2013). In the case of a return to public management, it is difficult to transfer the companies' private property (intangible assets such as software, management systems...). One solution is to impose this situation at the early beginning, in terms of the delegation contract. What about contracts already signed? How to agree on the transfer of private property?

Nowadays, water services management modes are often mixed between private and public actors. What about transfers of employees and technical means in these cases?

Finally, is the behavior of the public authority the same to a regie or a private operator? Could this behavior be related to the performance and results of the water service?

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648 rue Jean-François Breton – BP 44494 34093 MONPELLIER CEDEX 5

> Tél. : (33) 4 67 04 71 00 Fax. : (33) 4 67 04 71 01 www.agroparistech.fr



15 rue Edouard Chamberland 87065 Limoges Cedex

> Tél. (33) 5 55 11 47 80 Fax. (33) 5 55 11 47 48 www.oieau.org