



Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

LANE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

**ON MOTION FOR INTERIM
MEASURES UNDER ART. 10.2
OF THE STATUTE**

Introduction

1. On 14 January 2014, the Applicant, a P-5 level Senior Social Affairs Officer, Department of Economic and Social Affairs in New York, filed an application on the merits, under art. 2.1 of the Statute, contesting the Secretary-General's "decision rejecting the request to suspend the provision of official facilities to the polling officers who had been recalled by the Unit Chairpersons of the 44th Staff Council [of United Nations Staff Union ("UNSU")], thereby consenting to an improper electoral process" held in December 2013. The Applicant submits that the contested decision was communicated by email dated 9 December 2013 from the Assistant Secretary-General for Human Resources Management to the Chairperson of the UNSU Unit Chairpersons.

2. Two days later, on 16 January 2014, the Applicant filed a motion for interim measures, under art. 10.2 of the Tribunal's Statute, seeking

an order directing the Respondent to suspend further action with regard to the provision of official facilities to the Polling Officers who had been recalled under section 6.17 of the Regulations of the United Nations Staff Union and to suspend any action recognizing or endorsing the results of the contested process that took place in December 2013 until the Staff Union makes a final determination as to how the election of the 45th Staff Council and its Leadership should take place.

3. In her motion for interim measures, the Applicant identified the contested decision as follows:

The Secretary-General refused to recognize the actions of the Unit Chairpersons in recalling the Polling Officers and thereby suspending the electoral process then underway and ignored the communications of Union officials citing serious violations of the electoral process.

4. With respect to the *prima facie* unlawfulness of the contested decision, the Applicant submits that, although the UNSU Statute and Regulations provide for

a method of dispute resolution—i.e., the Arbitration Committee, which provides binding rulings on complaints concerning alleged violations of the UNSU Statute and Regulations—they provide “no specific modality for the enforcement of resulting decision”, which, in the Applicant’s view, “is ultimately left to the Secretary-General as Chief Administrative Officer of the Organization”. The Applicant submits that the Secretary-General allowed an unauthorized election to take place and “engaged in interference in the very system he has promulgated in order to ensure fairness”. The Applicant submits that this resulted in a violation of her right to a fair electoral process, provided for under staff rule 8.1(d).

5. With regard to the requirement of *particular urgency* of the matter, the Applicant submits that “while the [UNSU] is now attempting to rectify the resulting confusion, any action on the part of the Administration to appear to take sides would result in further

elections in December 2013 were conducted in accordance with the UNSU Statute and Regulations”.

Background

8. On 21 and 22 November 2013, the President of the UNSU, at the request of the 44th Staff Council, wrote to the Secretary-General, forwarding two decisions of the Arbitration Committee of the UNSU, dated 20 November 2013, concerning the electoral process for the 45th Staff Council and the Leadership of the UNSU. The President of the UNSU requested the Secretary-General to “ensure the fairness of the vote” in elections set to take place on or about 11 December 2013. In one of the two forwarded decision, the Arbitration Committee expressed its concerns over the electoral process, particularly the system of registration, nomination, and voting, and recommended that the elections “be halted and that the Polling Officers and Staff Council work together to resolve all outstanding issues, so as to ensure the complete integrity and fairness of the ballot”. In the second decision dated 20 November 2013, the Arbitration Committee concluded that one of the candidates for the office of the President of the UNSU (himself a former President of the UNSU) “should not be allowed to stand for election or hold any pos into compliance” several violations owing thd improper holding of UNSU funds in a Citibank acco28Tapparently opened during his past Presidency of the UNSU and sTJI controlled by him.

9. Subsequently several further sn-1.8(morbi32f6 0 TD()Tj2eD()T,5-20.6bi39r5.24(o5.24.1

I fully agree that the elections of the UN Staff Union should be held in full conformity with the UN Staff Regulations and Rules, as well as the Statute and Regulations of the UN Staff Union.

With regard to your request for unspecified measures to “ensure the fairness of the vote”, I trust you will understand that the principle of non-interference in Staff Union elections would preclude the Administration from taking such measures.

11. On 9 December 2013, the Chair of the Unit Chairpersons of the UNSU wrote to the Assistant Secretary-General for Hu

the Secretary-General to uphold staff right to free and fair elections as provided for in the Staff Rules and Regulations by acting upon decisions of the UN Staff Union [UNSU] Arbitration Committee and Unit Chairs as provided for in the [UNSU] Statute”.

15. On 13 December 2013, the Management Evaluation Unit completed its review of the Applicant’s request for management evaluation, and concluded that it was not receivable.

16. On 16 December 2013, having found that

Consideration

19. Article 10.2 of the Tribunal's Statute provides:

At any time during the proceedings, the Dispute Tribunal may order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. This temporary relief may include an order to suspend the implementation of the contested administrative decision, except in cases of appointment, promotion or termination.

20. A motion filed under art. 10.2 of the Tribunal's Statute is, by its nature, a request for urgent interim relief pending final resolution of the matter. It is an extraordinary discretionary relief, which is generally not subject to appeal, and which requires consideration by the Judge within five days of the service of the motion on the Respondent (see art. 14.3 of the Tribunal's Rules of Procedure). Such motions disrupt the normal day-to-day business of the Tribunal. Therefore, parties approaching the Tribunal with motions for interim relief must do so on real urgency basis, with full disclosure of the facts relied on for relief and sufficient information for the Tribunal to decide the matter preferably on the papers before it. The proceedings are not meant to turn into a full hearing on the merits.

21. Pursuant to art. 10.2 of its Statute, the Tribunal may order an interim measure to provide temporary relief to either party, only if it is satisfied that all three requirements of that article have been met—i.e., that thticseu2measppe.e81 (nt8.5(t-0approa282 T

the Arbitration Committee (see UNSU reg. 8.3.1). The rulings of the Arbitration Committee are binding on all bodies of the UNSU (see UNSU reg. 8.1). (See further *Saffir* UNDT/2013/109, *Ginivan* UNDT/2013/110.)

26.

Case No. UNDT/NY/2014/004

Order No. 18 (NY/2014)