



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

SAKHARDANDE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat
Alister Cumming, ALS/OHRM, UN Secretariat

has not contested that Mr. Hassanin was duly elected as a First Vice-President of the Union in the December 2013 election.

... Further, in its decision dated 14 May 2014, the Arbitration Committee, in response to a complaint submitted by members of the Executive Board of the 45th Staff Council, considered the matter of the term of office of the elected Leadership and

the Union, concerning the convening of the unauthorized meeting on 8 December 2016, the Arbitration Committee decided [reference to annex omitted]:

“...the 8 December 2016 meeting is an emergency general meeting in the meaning of the Statute, which was properly called as per Statute 9.7 (c), but was convened in violation of Regulations 5.2, 5.4, 5.7, 5.9, 5.11, 5.13, 5.17, 10.5 (b), and 10.5 (c). Further, taken in the best light, the outcome of the meeting represents a valid motion by the staff for the convening of an emergency general meeting in the context of Regulations 5.11 and 5.13, which is incumbent upon the Staff Council to consider.”

.. Subsequently, [Ms. KK, name redacted], who was at the time Chief, Transition Team of the Secretary-General-designate, responded to a correspondence from [Mr. AM] an email dated 29 December 2016, stating (emphasis added):

“...I also note in the letter of 14 December 2016 to the SG, entitled "UNHQ staff voted for new Staff Union Elections to be conducted by a 3rd party (CCISUA)", which indicates in point 2, “The President of CCISUA, [Mr. IR, name redacted], will act as interim leadership for UNHQ Staff Union, effective the date of this letter and until new leadership is elected.”

... In its response dated 3 January to the request from [Mr. AM] to rule on the proposed designation of [Mr. IR] as the leadership for the Staff Union, as revealed in the correspondence of [Ms. KK], the Arbitration Committee provided (Annex 5) (emphasis added):

“It is well known that [Mr. IR] is not only the President of CCISUA, but also the Executive Secretary of the Staff Coordination Council at the United Nations Office in Geneva (UNOG). [Mr. IR] is not a dues paying member of the UNHQ Staff Union, and is therefore statutorily prohibited from voting in any Union election or holding any Union office, ad interim or otherwise, at UNHQ. Any decision by [Mr. IR] concerning any Union election will be deemed illegal, and hence null and void.”

... On 4 January 2017, the Department of Management broadcast to the staff an email jointly signed by [Mr. IR], President of CCISUA, and [Mr. DS, name redacted], President of UNISERV [reference to annex omitted]. The email included, among other things (emphasis added):

“CISUA and UNISERV will elect a college of polling officers and arbitration committee members from among their global union membership, and contract a recognized firm to carry out electronic voting.

The polling officers will receive the names of eligible voters from the Department of Management, carry out the apportionments, call for candidates and carry out elections for unit representatives, unit chairs and the leadership.

The elections will be carried out in line with UNSU’s statutes and regulations, adapted during a transitional period to integrate the above arrangements. The transitional statutes, cleared by the Office of the Legal Adviser as being compliant with the Staff Rules can be found here: <http://www.ccisua.org/wp->

... On 5 January 2017, [Mr. AM] transmitted a letter to the Secretary-General on behalf of the President of the Union, which stated [reference to annex and emphasis omitted]:

“Allow me also to state that the announcement posted on iSeek on 4 January 2017 (‘Arrangements for new staff union election in New York’), runs counter to the relevant provisions concerning the organization and holding of Staff Union elections. Also, the so-called “transitional measures” refe

- c. The Appeals Tribunal defined in *Wasserstrom* 2014-UNAT-457, para. 35, the nature of an administrative decision. The decision of the Department

electoral regulations drawn up by the staff representative bodies. The provision is contingent on the premise that such regulations have been drawn up as provided in the Statute and Regulation of the Union and does not extend to amendments made illegally;

k. Not only the Office of the Legal Counsel lacks the authority to approve illegally constituted electoral regulations, it also does not have any authority in this regard, as the authority to agree to the electoral regulations drawn up by the staff representative bodies has been retained by the Secretary-General (see ST/SGB/2015/1 (Delegation of authority in the administration of the Staff Regulations and Staff Rules));

l. The decision of the Office of the Legal Counsel is doubly unlawful, given that amendment to the election regulations were illegally made, and that the Office of the Legal Advisor lacks the appropriate delegation of authority to agree to such amendments even if they were properly constituted;

m. The decisions contravene the Administration's position of non-interference in the Union affairs and breach its obligations of good faith and fair dealings. The Administration's position of non-interference in the Staff Union's Affairs, generally, and in particular as it relates to the 45th Staff Council, was summarized in the Respondent's submission to the Dispute Tribunal in *Tavora-Jaichill* UNDT/2015/082, notably that:

- i. The internal dispute relating to the outcome of the UNSU elections is ongoing, and it extends to the Applicant's claim that she is entitled to act as President of the 44th Staff Council until her successor takes office. Contrary to the Applicant's claims, the Respondent has not recognized her authority to act as President;
- ii. The Administration is required to refrain from interfering with the affairs of the UNSU. Accordingly, the Administration has

no authority to recognize her as the current President of the UNSU;

n. This position has been stated earlier in *Lane* Order No. 341 (NY/2013) in which the Applicant quoted the then Assistant Secretary-General for Human Resources Management's response to an email from the Chairperson of the Unit Chairpersons, stating that "it was a longstanding policy and practice that it would be inappropriate for management to become involved in internal administration of the Staff Unions. Such involvement would not be conducive to the proper conduct of staff management relations";

o. The Under-Secretary-General for Management similarly stated in a memorandum dated 24 December 2013 that, "The Administration will refrain from taking any action that may prejudice the outcome of the efforts by the Arbitration Committee to resolve these disputes";

p. In *James* UNDT/NY/2009/025, para. 28, the Dispute Tribunal found that "it is a universal obligation of both employee and employer to act in good faith towards each other. Good faith includes acting rationally, fairly, honestly, and in accordance with the obligation of due process". Likewise, the Dispute Tribunal found in *Alauddin* UNDT/NY/2010/11 that "[i]t is important to observe that it is implicit in the Rules and Regulations and administrative issuances that the Organization, and, for that matter, the staff members are bound to act in good faith and to make decisions in the course of fair dealing and that this obligation is not satisfied by what is called facial compliance with the text of the relevant instrument".

q. The actions of the Administration, including its direct involvement in the mass broadcast of the email by Mr. IR and Mr. DS to all the staff in the Secretariat and approval of posting the announcements about the new elections on iSeek, make mockery of its position of non-interference in the

Union affairs when it was convenient to deny the duly elected Leadership and 45th Staff Council time release and physical accommodation for three years;

r. In view of the above, the decision of the Department of Management to provide the names of eligible voters to unqualified and unlawfully convened college of Polling Officers, pursuant to what the Arbitration Committee has deemed an illegal, null, and void decision by a non-Union member, is unlawful. The decision of the Office of Legal Counsel to agree to the so-called “transitional measures” is plainly unlawful as it contravenes explicit United Nations Staff Regulations and Staff Rules and Secretary-General’s instructions. The decisions contravene the Administration’s position of non-interference in the Staff Union affairs and breach its obligations of good faith and fair dealings.

Urgency

s. With reference to *Jitsamruay* UNDT/2011/206, *Villamoran* UNDT/2011/126, *Pius Onana* UNDT/2009/033 and *Saffir* Order No. 49 (NY/2013), it is particularly urgent to suspend the impugned decisions, in particular the decision of the Department of Management to provide the names of eligible voters to unqualified and unlawfully convened college of polling officers, pursuant to what the Arbitration Committee has deemed an illegal, null, and void decision by a non-Union member. If not suspended, an unlawfully convened college of polling officers would be provided the names of eligible staff to make the apportionment of units necessary to carry out the unlawful election, pursuant to unlawful administrative decisions;

Irreparable damage

t. With reference to *Tadonki* UNDT/2009/016, para. 13, *Adundo et al.* UNDT/2012/077, paras. 31 and 32, and *Jaen* Order No. 29 (NY/2011), paras. 31 and 32, as a Polling Officer, the Applicant is entitled to carry out the

functions for which he has been selected, affirmed and reaffirmed to hold

when management evaluation for that decision has been duly requested and is still ongoing (*Igbinedion* 2011-UNAT-159, *Benchebbak* 2012-UNAT-256).

13. As results from the case record, the Applicant submitted his request for management evaluation on 11 January 2017, contesting:

a. “The decision of the Department of Management to provide the names of eligible voters to an unqualified and unlawfully convened college of Polling Officers, pursuant to what the Arbitration Committee has deemed an illegal, null and void decision by a non-dues-paying, non-member of the Staff Union (Union) at the Headquarters in New York (UNHQ)”;

b. “The decision of the Office of the Legal Counsel to clear the so-called “transitional measures” amending the Statute and Regulations of the Union, which the Arbitration Committee has deemed to be illegal, and hence null and void, as they were introduced in violation of the Statute and Regulations of the Union”; and

c. “The decision of the Administration to interfere in Union affairs”.

14. The MEU completed its review of the request for management evaluation on

Conclusion

16. In the light of the foregoing, the Tribunal ORDERS:

The application for suspension of action is dismissed.

(Signed)

Judge Alessandra Greceanu

Dated this 16th day of January 2017