



**Before:** Judge Ebrahim-Carstens

**Registry:** New York

**Registrar:** Hafida Lahiouel

LANE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER**

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

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**Counsel for Applicant:**  
George Irving

**Counsel for Respondent:**  
Alan Gutman, ALS/OHRM, UN Secretariat  
Elizabeth Gall, ALS/OHRM, UN Secretariat

## **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 44<sup>th</sup> 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 45<sup>th</sup> 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 division and protraction of the problem”. She states that it is critical for the UNSU to “re-establish a credible electoral process in conformity with its Statute and findings of its Arbitration Committee”, which “requires that no further action is undertaken that would compromise that process”.

6. With respect to the requirement of *irreparable harm*, the Applicant submits that “official recognition of a procedurally flawed electoral process would violate the Applicant’s right to proper representation”, which is “not a lost right that may easily be remedied at a later time through compensation”.

7. The Registry transmitted the present motion for interim measures to the Respondent on 17 January 2014. The Respondent duly filed his reply on 21 January 2014. The Respondent submits, *inter alia*, that the contested decision does not affect the Applicant’s rights and that the present application is not receivable as the Tribunal has no jurisdiction over Staff Union matters. The Respondent further submits that, as “the Secretary-General is not involved in the conduct of elections, he has no comment to make on whether or not the UNSU

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 44<sup>th</sup> 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 45<sup>th</sup> 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 post within the Staff Union until he brings into compliance” several violations on his part, including the improper holding of UNSU funds in a Citibank account apparently opened during his past Presidency of the UNSU and still controlled by him.

9. Subsequently several further decisions were issued by the Arbitration Committee in late November and early December 2013 regarding to various aspects of the electoral process.

10. On 6 December 2013, the Chef de Cabinet of the Secretary-General replied to the President of the UNSU, stating that the Secretary-General would take no action:

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 Human Resources Management informing him that the Polling Officers for the upcoming elections had been recalled in compliance with the Statute and Regulations of the UNSU. The Chair of the Unit Chairpersons further requested the Assistant Secretary-General to terminate the United Nations email account allocated to the Polling Officers as well as their posting privileges to iSeek (United Nations intranet portal) and time release.

12. The Assistant Secretary-General for Human Resources Management replied to the email from the Chairperson of the Unit Chairpersons on 9 December 2013, 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”.

13. On 11 December 2013, the Applicant requested removal of her name from the list of candidates for staff representatives as she did not wish “to be part of a fraudulent process”.

14. On 11 December 2013, the Applicant submitted a request for management evaluation, identifying the contested decision as “[t]he decision of the Secretary-General, as communicated by his officials [on 9 December 2013], rejecting the request to suspend the provision of official facilities to the recently recalled polling officers”. On the same day, she filed an application for suspension of action, pending management evaluation, identifying the contested decision as the “failure of

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 the management evaluation, a precondition for relief under art. 2.2 of the Tribunal’s Statute, was no longer ongoing, the Tribunal issued Order No. 341 (NY/2013), dismissing the Applicant’s application for suspension of action.

17. On 17 December 2013, the results of the elections were announced. The Applicant submits that these results were unlawful as the elections were carried out by the recalled Polling Officers with grave violations of the UNSU Statute and Regulations.

18. On 19 December 2013, the President of the UNSU wrote to the Secretary-General requesting that he “withhold any endorsement of the results of this flawed process until the matter can be properly settled in accordance with the Statute and Regulations of the Union”. On 24 December 2013, the Under-Secretary-General for Management responded to the President of the Staff Union on behalf of the Secretary-General, stating that the Administration would refrain from taking any action that may prejudice the outcome of the efforts by the Arbitration Committee to resolve the disputes regarding the UNSU elections”.

## 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 the case is of particular urgency, that the implementation of the contested decision would cause irreparable damage, and that the decision appears *prima facie* to be unlawful.

22. The Tribunal considers this application as not meeting the requirements for an interim relief order.

23. Even if the Tribunal were to accept her submissions regarding the receivability of her claims and its jurisdiction in such matters, it finds that the Applicant has failed to demonstrate that the implementation of the contested decision would cause irreparable harm or that the matter is of particular urgency. Regardless of whether the Polling Officers properly exercised their functions and whether the elections were properly held—and whether these are indeed matters for the Tribunal to determine or for the Secretary General to action—the papers filed indicate that the Staff Union has already made a call for new Polling Officers. Further, not only were the Polling Officers who ran the December 2013 elections recalled, but, in so far as the December 2013 elections are concerned, those Polling Officers are now *functus officio*. Furthermore, on the papers before the Tribunal, there is no evidence that the Secretary-General has endorsed, or has any intention to endorse, the results of the allegedly flawed process, and indeed has undertaken to refrain from taking any action pending a decision of the Arbitration Committee. Therefore there is no urgency or anticipated irreparable harm.

24. The requirements of urgency and irreparable harm not being satisfied, the Tribunal need not consider this motion further. However, the Tribunal finds it appropriate to make the following observations.

25. The UNSU Statute and Regulations, adopted on 14 December 2007, regulate the conduct of the UNSU elections. The UNSU Statute and Regulations also established the Arbitration Committee to “review alleged violations of the Statute of the Staff Union and decide on sanctions where warranted” (UNSU reg. 8.1) as well as to deal with issues of “interpretation of the Statute, its Regulations or any policy” (UNSU Statute, art. 17.2). In terms of UNSU reg. 8.2.3, “[t]he Arbitration Committee shall receive, consider and rule upon matters related to violations of the Statute and Regulations”. Furthermore, if any member of the UNSU is of the view that an act of the Staff Council, Executive Board or any of its officers is in violation of the Statute and Regulations, a complaint may be submitted to



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. The Tribunal notes that the Arbitration Committee, in a number of its recent decisions provided to the Tribunal in the course of the present proceedings, expressed its rulings in the form of “recommendations”. The reasons for this are not entirely clear to the Tribunal, as the Arbitration Committee has the authority to issue *binding* rulings on matters pertaining to Staff Union affairs and to decide on sanctions where warranted (see UNSU reg. 8.2.5).

27. Noting that a number of applications and motions have been submitted recently by the members and officials of the Staff Union, the Tribunal finds it appropriate to reiterate its pronouncement in *Saffir*:

38. The international best practice principles are that arbitration rulings and awards are binding with limited scope for appeal. In some jurisdictions, appeals from arbitration bodies are often limited to points of law. Paragraph 442 of the 2006 Digest [*Freedom of Association – Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO* (2006)] recommends that trade union election challenges should be referred to the judicial authorities. The Applicant’s request for the Tribunal “to order new elections” should any investigation by the Secretary-General (overseen by the Tribunal) prove the 2011 election results unsafe, is effectively asking the Tribunal to declare the previous elections null and void. There is no legal authority that empowers the Tribunal to adjudicate such a submission. What is evident in this instance is that there is an Arbitration Committee whose decision on such matters is binding and final, and there is neither an express provision in its Statute, nor an implied provision, for referral of any electoral challenge to the Tribunal, either by individual action, or on appeal from the Arbitration Committee. Thus this Tribunal lacks jurisdiction to entertain claims seeking its oversight of an investigation into the 2011 elections and an order for new elections. Whether an approach to a domestic court is possible in this instance is not a matter for this Tribunal. Likewise, it is not for this Tribunal to pronounce on whether the Staff Union should consider amending its Statute in the event its

membership is dissatisfied with having a final and binding arbitration system in its current form.

28. The Tribunal finds that the Applicant has failed to satisfy the requirements for interim relief.

**Order**

29. The present motion for interim measures is rejected.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 24<sup>th</sup> day of January 2014