



**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**

---

**Counsel for Applicant:**  
George Irving

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

## **Introduction**

1. This is the second motion for interim measures filed by the Applicant in the last two weeks under art. 10.2 of the Tribunal's Statute. The facts in support of the merits of the application and the Applicant's first motion for interim measures are more fully set out in Order No. 18 (NY/2014) dated 24 January 2014.

2. The Applicant is a P-5 level Senior Social Affairs Officer, Department of Economic and Social Affairs in the United Nations Secretariat in New York, who, in December 2013, withdrew her unopposed candidature for Unit Representative for the 45<sup>th</sup> Staff Council. On 14 January 2014, she filed an application on the merits, 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 [the] improper electoral process" held in December 2013.

3. The Applicant's first motion for interim measures was filed on 16 January 2014 whereby she sought, *inter alia* an order directing that the Respondent suspend the provision of official facilities to Polling Officers who had been recalled under section 6.17 of the UNSU Regulations, and that the Respondent not take any action recognizing or endorsing the results of the contested electoral process that took place in December 2013 until a final determination by the Staff Union regarding the conduct of the elections for the 45<sup>th</sup> Staff Council. This first motion was rejected by the Tribunal by Order No. 18 (NY/2014) on the grounds that the Applicant had 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.

4. In her current motion for interim measures, filed after close of business day on Friday, 31 January 2014, the Applicant seeks an order directing

the Respondent to abide by the decision of the Unit Chairpersons under section 6.17 of the Regulations of the UNSU, recalling the Polling Officers of the 44<sup>th</sup> Staff Council, and to therefore suspend further action with regard to the provision of official email and other facilities to the Polling Officers who had been recalled. The Applicant specifically requests the Tribunal to order the Respondent to cease all further action in support of efforts by the former Polling Officers to conduct further elections of any kind.

5. The Registry transmitted the present motion for interim measures to the Respondent on Monday, 3 February 2014. The Respondent duly filed his reply on Wednesday, 5 February 2014. The Respondent submits, *inter-alia*, that the motion for interim measures is not receivable as the alleged administrative decision postdates the application on the merits and the contested decision identified in the current motion is different from the one challenged by the Applicant in her substantive application. In particular, the Respondent submits that the alleged 30 January 2014 administrative decision constitutes a new decision which has not been submitted for management evaluation nor challenged by way of an application as a separate administrative decision.

## **Background**

6. The factual background to this motion mirrors that which is fully discussed in Order No.18 (NY/2014) and need not be fully repeated herein. In November 2013, the President of the 44<sup>th</sup> Staff Council of the UNSU forwarded two decisions of the Arbitration Committee of the UNSU to the Secretary-General, regarding the electoral process for the 45<sup>th</sup> Staff Council and the Leadership of the UNSU, requesting his intervention in ensuring a fair electoral process scheduled on 11 December 2013 or thereabouts. The Arbitration Committee expressed concern over aspects of the process and recommended that the Polling Officers and Staff Council resolve matters before any elections were held. Thereafter, in late November and early December 2013, the Arbitration Committee issued further rulings containing various recommendations regarding the conduct of the elections.

7. On 6 December 2013, the Chef de Cabinet of the Secretary-General replied to the UNSU President's November 2013 communications stating that because of the principle of non-interference in Staff Union elections, the Secretary-General was precluded from taking any action.

8. On 9 December 2013, the Assistant Secretary-General for Human Resources Management, declined a request of even date from the Chair of the Unit Chairpersons of the UNSU, that the Secretary-General withdraw certain facilities (email account, time release and posting to iSeek (UN Intranet)) afforded to the Polling Officers who had been recalled, stating "...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".

9. On 11 December 2013, the Applicant withdrew her candidacy from what she termed a "fraudulent process" and submitted a request for management evaluation of the 9 December 2013 decision of the Secretary-General regarding

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”. On 13 December 2013, the Management Evaluation Unit concluded that the Applicant’s request for management evaluation was not receivable and, on 16 December 2013, the Tribunal, by Order No. 341 (NY/2013), dismissed her application for suspension of action under art. 2.2 of the Tribunal’s Statute as management evaluation was no longer pending.

10. On 19 December 2013, the President of the 44<sup>th</sup> 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, 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”. There is no information as to whether there have been any developments in this regard before the Tribunal.

### **Consideration**

11. In terms of Article 10.2 of the Tribunal’s Statute, the Dispute Tribunal may, at any time during the proceedings, order an interim measure to provide *temporary* relief to either party provided the three requirements of *prima facie* unlawfulness, urgency and irreparable harm are met. This relief may include an order to suspend the implementation of the contested administrative decision.

12. 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 timeously, on well-grounded basis, and with circumspection, making full disclosure of all relevant facts, (including circumstances adverse to an applicant and within the applicant's knowledge), to enable the Tribunal to grant the interim relief on the motion papers before it, as a motion for interim measures may stand or fall on its founding papers. The proceedings are not meant to turn into a full hearing on the merits or to decide the case on the merits. Furthermore, the grant of an interdict is not definitive of the parties rights, should not be final in effect, or have the effect of disposing of the substantive case.

13. The Applicant's latest motion for interim measures is ill-fated for various reasons. The Applicant appears to be challenging two separate decisions with two separate dates, one of which has been subjected to management evaluation and the other not.

14. In her substantive application, which has undergone management evaluation, the Applicant calls upon the Secretary-General, as Chief Administrative Officer of the Organization, to respect the decisions of the 44<sup>th</sup> Staff Council Arbitration Committee and Unit Chairpersons, that he does not consent to an improper electoral process, and that he facilitates the conduct of a new election for the Leadership and 45<sup>th</sup> Staff Council.

15. In the instant motion the Applicant seeks an order that the Respondent abide by the recall decision of the Unit Chairpersons, and that he withdraw all official facilities to the polling officers to prevent them from conducting further "elections of any kind". This motion appears to have been spurred by a request by the Chair of the recalled Polling Officers, *ex post facto* the substantive application, for nominations for an Arbitration Committee by 14 February 2014.

16. At first blush, it therefore appears questionable whether the substantive relief claimed in the application on the merits can support the instant application for interim measures. However, although couched in different ways in her application and the two motions for interim measures, the Applicant's principal contention, *inter alia*, is that the Secretary General's continuing inaction, and therefore his continuing failure to withdraw facilities granted to the recalled Polling Officers, means that he has consented to an improper electoral process which has affected her contractual right under Staff Rule 8.1(d) to stand for, and participate in, a free and fair election.

17. It is evident that the Polling Officers have been recalled by the Unit Chairpersons, whether lawfully or unlawfully so is obviously in dispute. The Applicant is requesting the withdrawal of official facilities to prevent the recalled Polling Officers from conducting any further business in relation to UNSU matters on an ongoing basis, pending the determination of her substantive case, presumably on the basis that the remedy she may be entitled to would be rendered ineffectual in the final analysis.

18. The general principles upon which an interim interdict is granted include the absence of an adequate alternative remedy, and the balance of convenience favouring the granting of an interdict. There is no indication in the founding papers of this motion whether the Arbitration Committee has made any finding regarding the recall, or if and when it intends to do so. In this regard, the Tribunal made this observation in Order No. 18 (NY/2014):

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.)

19. The purpose of an *interdict pendente lite* or interim measure, is not to grant final, but only temporary relief, pending the outcome of substantive proceedings. For the Tribunal to grant the interim measures requested by the Applicant, if indeed it is competent or has jurisdiction to do so in the instant case, would be to rule on the propriety of the recall of the Polling Officers. Consequently, if the interim measure were to be granted, the Tribunal would not only be adjudicating that the recall of Polling Officers was proper, but that as a result the contested election process was invalid, thus effectively disposing of the substantive case. This would be an unfortunate outcome, particularly in this instance, where there are other interested parties who may be adversely affected by the Order and where it is unclear whether the internal statutory mechanisms have been exhausted.

20. In view of the above findings that the granting of the requested relief would result in a final ruling rather than one temporary in nature, and in light of the Tribunal's observations in Order No. 18 (NY/2014) regarding the role of the Arbitration Committee, the Tribunal finds that the present motion stands to be rejected.



**Order**

21. The present motion for interim measures is rejected.

*(Signed)*

Judge Ebrahim-Carstens

Dated this 10<sup>th</sup> day of February 2014