



Before: Judge Alessandra Greceanu

Registry: New York

Registrar: Hafida Lahiouel

SAKHARDANDE

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

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

Counsel for Applicant:
Self-represented

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

Introduction

1. On 16 January 2017, at 10:47 a.m., the Applicant, an Information Systems Assistant at the GS-6, step 10, level in the Department of Economic and Social Affairs, filed an application on the merits contesting the following decisions:

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”.

2. On 16 January 2017, at 12:45 pm the Applicant filed a motion for interim measures requesting, as interim relief pursuant art. 10.2 of the Statute, the suspension of the implementation of the following contested decisions pending the proceedings before the Dispute Tribunal:

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”.

3. An automatically generated email notification that the Applicant has filed a motion for interim measures to Case No. UNDT/NY/2017/6 was sent out by the Tribunal’s eFiling portal on 16 January 2017 12:46 p.m. In this notification was, *inter alia*, stated:

This is an automatically generated notification that the Applicant has made a filing (type: Motion for interim measures) to Case No. UNDT/NY/2017/6.

...

This notification is sent by the Registry. It constitutes (1) a record to the filing party of the receipt of the documents, but it is not a substantive acceptance of the document(s), which is a matter to be determined by the relevant Judge(s); and (2) the service of the documents on the other party.

4. On 16 January 2017, at 4:17 p.m., the New York Registry sent the parties an email notification confirming that, on 16 January 2017, received an application from the Applicant, which has been assigned to Judge Ebrahim-Carstens under Case No. UNDT/NY/2017/006, transmitted the application to the Respondent and instructed the Respondent, pursuant to art. 10 of the Rules of Procedure, to file a reply within 30 calendar days, by 15 February 2017, in accordance with art. 8.4 of the Tribunal’s Rules of Procedures.

5. On 17 January 2017, at 11:21 a.m., the New York Registry sent another email notification, confirming that the motion for interim measures received on 16 January 2017 in Case UNDT/2017/006 was assigned to Judge Ebrahim-Carstens and instructing the Respondent to file a response by 19 January 2017. This notification also stated that, “By this notification the motion for interim measure has been transmitted to the Respondent”.

6. On 18 January 2017, at 5:00 p.m., the Applicant filed a motion requesting the Tribunal to set 16 January 2017 as the date of service of the motion for interim measures on the Respondent as “[n]ormally, the Registry would service motions for interim relief [...] instantly”. Due to a technical problem with the eFiling portal, the motion was not notified to the Registry or the Respondent. The Registry became aware of the motion on 19 January 2016 following an email communication from the Applicant on the matter. The Respondent was served with the motion later on the same day, at 12.57 p.m., by the Registry, who advised the Respondent of technical difficulties with the eFiling system.

7. On 19 January 2017, at 12:57, the New York Registry advised the parties that, due to the assigned judge (Judge Ebrahim-Carstens), being on the sick leave, the motion for interim measures has been reassigned to the undersigned judge.

8. On 19 January 2016 at 2:47 p.m., the Respondent duly filed his response to the motion for interim relief, claiming that it is not receivable *ratione materiae* and, in any event, without merit as the Applicant has failed to show that any decision taken is *prima facie* unlawful, that there is particular urgency or that the implementation of a decision would cause him irreparable harm. The Respondent stated that he had no comments to the Applicant’s 18 January 2017 motion.

9. On account of the technical issues regarding the notifications in the present case, on 19 January 2017, at 4:27 p.m., the New York Registry issued a manual notification confirming that the Tribunal received the Respondent’s response to the Applicant’s motion for interim measures and motion dated 18 January 2017 and that the Respondent’s response was transmitted to the Applicant.

10. The Tribunal notes that, as results from the above, the motion for interim measures, was notified to the Respondent on 16 January 2017.

Factual background

1. In his motion for interim relief the Applicant presented the following chronology of facts on which his motion relies upon:

... As a result of the general election held on 10 and 11 December 2013, the Leadership and the 45th Staff Council of the Union at the Headquarters in New York (UNHQ) were elected to a two-year term starting 1 January 2014 [reference to annex omitted], pursuant to Article VIII, Regulation 8.1 (b) of the Staff Rules and Staff Regulations of the United Nations, published in the Secretary-General's Bulletin ST/SGB/2016/1, and Regulations 4.4 and 4.5 of the Union:

Staff Regulation 8.1

(b) Staff representative bodies shall be established and shall be entitled to initiate proposals to the Secretary-General for the purpose set forth in paragraph (a) above. They shall be organized in such a way as to afford equitable representation to all staff members, by means of elections that shall take place at least biennially under electoral regulations drawn up by the respective staff representative body and agreed to by the Secretary-General.

Union Regulations:

4.4 The Council shall take full office from the first day of the month immediately following the declared result of elections.

4.5 The term of office of the Council shall not expire earlier than a new Council assumes office.

... The Arbitration Committee has confirmed that the general election held on 10 and 11 December 2013 was conducted via a valid process, and hence upheld the outcome of the election in numerous decisions and communications, including its correspondence to [the Under-Secretary-General of Management, name redacted] of 24 January 2014, joint communication dated 22 October 2014, and decisions dated 6 December 2013, 18 March 2014, and 14 May 2015 [reference to annex omitted]. The outcome of the election was subsequently recognized by the Dispute Tribunal in *Hassanin* UNDT/NY/2016/181. Whereas the judgment UNDT/NY/2016/181 has been appealed, the Administration

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 45th Staff Council, concluding:

“Taking full office is not self-executing; but is effected by the Secretariat, specifically the Office of Human Resources Management, Department of Safety and Security, and the Departments and Offices of the elected staff representatives. Having been denied the time release mandated by the General Assembly and physically occupying the Union premises designated by the Secretariat for the staff representatives, it is the Committee’s conclusion that the Leadership and 45th Staff Council have not taken full office following the general staff election held on 10 and 11 December 2013.”

Hence, the Arbitration Committee decided to defer consideration of the matter of the term of office to such time as to when the elected Leadership and 45th Staff Council actually have taken full office. Thus, the matter of the term of office of the Leadership and 45th Staff Council remains pending with the Arbitration Committee.

... On 8 December 2017 [assumedly the correct year is 2016], a staff meeting was held following an announcement in iSeek for the convening of a “General Staff Meeting to enact change to ensure that your needs and concerns are addressed” (<https://iseek-newyork.un.org/content/general-staff-meeting-all-staff-members-invited-8-dec>). In addition, the Department of Management provided access to the Lotus Notes addresses of various staff members to circulate the announcement of that meeting. The President and Secretary of the Union immediately brought to the attention of the Secretary-General and conveners of that meeting the fact that the announced meeting was illegal. There was no response and, indeed the illegal meeting was convened and chaired by two staff members, [Ms. EB and Mr. RC, names redacted]. [Ms. EB] was elected to the 45th Staff Council. [Mr. RC] is not a staff representative.

... In its response dated 27 December 2016 to the petition submitted by [Mr. EDS, name redacted] Chairperson of the 45th Staff Council, and [Mr. AM, name redacted], Secretary of

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 [United Nations Staff Union’s, i.e. “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-content/uploads/2017/01/UNSUtransitional-statutes-marked.docx>. It should be noted that the sole purpose of these transitional statutes is to enable the organization and completion of the 2017 first quarter elections. They will not confer on CCISUA nor UNISERV a mandate to speak directly for UNSU nor to directly represent staff in New York in dealings with management or other parties.”

... In its response dated 5 January to the request from [Mr. AM] to rule on the broadcast in view of its ruling dated 3 January 2017, the Arbitration Committee reaffirmed its decision that any decision by [Mr. IR] concerning any Union election will be deemed illegal, and hence null and void, and stated that the same applies to [Mr. DS]. The Arbitration Committee further stated [reference to annex and emphasis omitted]:

“...the Statute provides but one and only one way to amend its articles – through referendum. Amendments introduced through any other means are therefore illegal, and hence null and void”.

“...the Staff Rules and Staff Regulations clearly establish the imperative of the approval of Secretary-General to any amendments made to the Statute and Regulations of staff representative bodies. It is not clear what the Office of Legal Adviser is or what authority it has to approve amendments to the Statute and Regulations of the Union made illegally.”

“In view of the above considerations, the Committee has decided that all the actions concerning the new election stipulated in the broadcast are in violation of the Statute and Regulations of the Union.”

... 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” referred to in the announcement violate the relevant provisions of the Statute of the Staff Union with regard to making amendments thereto. I would therefore respectfully request, Sir, that you express your disapproval of both the posted announcement and the “transitional statutes”.

I should also like to object to the iSeek announcement this morning (“Congratulations UNHQ Staff”), which, similarly, is in contravention of the decisions handed down by the Arbitration Committee and the Statute and Regulations of the Staff Union and amount to propaganda instigated by the very officials in the Department of Management who disallowed the 45th Staff Council representatives from assuming office. I would therefore likewise request that you take action accordingly and engage us directly.”

... No response has been received from the Secretary-General to the request.

... Subsequently, on 11 January 2017, the Applicant submitted a request for management evaluation to the Management Evaluation Unit (MEU), which provided its response on 13 January 2017, with the blazing speed it typically reserves for sabotaging suspension of action applications, that the request was not receivable [reference to annexes omitted].

2. In the Respondent’s 19 January 2017 response, he adds as follows:

... On 4 January 2017, at the request of the United Nations International Civil Servants Federation [“UNISERV”] and the Coordinating Committee of the International Staff Unions and Associations [“CCISUA”], an email broadcast was sent to all staff in

New York. This email stated that staff in New York had requested UNISERV and CCISUA to organize elections for the Staff Union.

... According to the email, UNISERV and CCISUA would carry out these elections in accordance with amended Statute and Regulations of the Staff Union. These amendments would be made to enable elections to take place in early March 2017.

... On 16 January 2017, a further broadcast email was sent to all staff in New York from UNISERV and CCISUA. In that email, an update on the process was provided. The name of the company contracted to provide voting services was named, as were polling officers and the members of the arbitration committee, appointed under the Staff Union's Statute and Regulations.

Parties' submissions

3. The Applicant's contentions may be summarized as follows:

Receivability

a. As a staff member and a polling officer of the 45th Staff Council, who continues to hold office as per the decision Arbitration Committee dated 21 October 2015, the Applicant is not a staff representative as per regulation 6.6 of the Union Regulations;

b. The Applicant's right to be selected as and serve as a polling officer under the Union's Statute and Regulations for from staff rule 8.1(d) and is therefore a legal right of the Applicant under his contract of employment;

c. Polling officers selected by the staff shall conduct the election of the members of each staff representative body on the basis of the relevant electoral regulations of the staff representative body to ensure the complete secrecy and fairness of the vote;

d. MEU's contention that the Applicant has no legal right is therefore fallacious under *Obdeijin* UNDT/2011/032, para. 31. The Applicant does not seek a ruling concerning an internal affair of the Union or on behalf of other

staff members, but only in relation to his own legal right. The Application is therefore receivable pursuant to *Carlton* UNDT/NY/2014/055, para. 18;

e. In *Wasserstrom* 2014-UNAT-457, para. 35, the Appeals Tribunal defined the nature of an administrative decision, and it is well established that not taking a decision is an administrative decision that is capable of being reviewed by the Tribunal (see *Tabari* 2010-UNAT-030);

Prima facie unlawfulness

f. 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 statutes” is plainly unlawful as it contravenes explicit Staff Regulations and Staff Rules and the 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;

g. Referring to *Adundo et al.* Order No. 8 (NY/2013), para. 17, these decisions could only be deemed to have been implemented in their entirety at the end of the election cycle, as the staff list is continually updated by eliminating retired and transferred staff, and adding newly appointed staff, and the changes are provided to the unlawfully convened polling officers until the election is held.

h. The Arbitration Committee is the sole authority to regulate and adjudicate all matters related to the Union elections, and the Administration has no authority to regulate or adjudicate any Union matters, in particular on matters related to Union elections elected bodies (referring to *Lane* Order No. 18 (NY/2014), paras. 25-27 and *Tavora-Jainchill* Order No. 36 (NY/2014),

para. 24, and *Tavora-Jainchill* UNDT/2015/082 the Dispute Tribunal, para 25);

i. The decision of the Department of Management to provide the names of eligible voters to unqualified and illegally convened polling officers pursuant to what the Arbitration Committee deemed illegal, null, and void decision by a non-Union member is unlawful. The Arbitration Committee's decision dated 4 January 2017 provides that the new group of polling officers referred to in the 4 January 2017 broadcast is unlawfully constituted as it is formed pursuant to a decision by a non-dues paying, non-member of the Union, and as it will include non-dues paying, non-members of the Union;

j. In its response dated 18 March 2014, the Arbitration Committee rescinded the decision of the Group of Unit Chairpersons to recall the Polling Officers of the 45th Staff Council, and deemed all subsequent actions taken by the Group based on the rescinded decision, including the call for, and election of new polling officers, null and void;

k. Further, in its decision dated 21 October 2015, the Arbitration Committee in response to a petition by the Applicant decided that:

As results from the above considerations, the Polling Officers shall continue to hold office and serve until new Polling Officers have been elected by the 45th Staff Council once it has taken full office in accordance with Regulation 6.3.

This conclusion entails that the Polling Officers shall have the authority to organize and conduct elections, and publish its results, as required by the Statute, Regulations and rules of procedure in accordance with Statute 13.1.

While confirming the authority of the Polling Officers to call, organize and conduct a general election, and publish its results, the Committee is cognizant of the prevailing situation, and expects the Polling Officers to consult with the 45th Staff Council on the appropriate time and course of action to hold the general election.

l. As determined by the Arbitration Committee, the polling officers of the 45th Staff Council continue to hold office and have the authority to organize and conduct elections, and publish its results. The general election may only be held by the polling officers of the 45th Staff Council after consultation with the 45th Staff Council on the appropriate time and course of action. It then follows that the Department of Management may only provide the names of eligible voters to the polling officers of the 45th Staff Council. Any other course of action pursuant to what the Arbitration Committee has deemed illegal, null, and void decision by a non-dues paying, non-member of the Union, is therefore unlawful;

m. The decision of the Office of the Legal Counsel to agree to the so-called “transitional-measures” contravenes explicit United Nations Staff Regulations and Staff Rules and the Secretary-General’s instructions. As per the Arbitration Committee’s decision dated 5 January 2017, the Staff Rules and Staff Regulations has established the imperative of the approval of Secretary-General to any amendments made to 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 amendment made illegally.

n. Not only does the Office of the Legal Counsel lack the authority to approve illegally constituted electoral regulations, it also has no 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));

o. The decision of the Office of the Legal Counsel is therefore 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;

p. 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-Jainchill* UNDT/2015/082 as follows:

- 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... Page 9 of 11 Form UNDT/F.11E rev. 31 January 2013

q. This position has been stated earlier in *Lane* Order No. 341 (NY/2013) in which the Applicant quoted the Assistant Secretary-General for Human Resources Management's reply to an email from the Chairperson of the Unit Chairpersons as: "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". Also, Under-Secretary-General, Department of Management, 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”;

r. In *James* UNDT/NY/2009/025 and *Alauddin* UNDT/NY/2010/11, the Dispute Tribunal established the obligation of staff members and Administration to act in good faith toward each other. 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;

s. 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

t. With reference to *Jitsamruay* UNDT/2011/206, *Villamorán* 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

u. 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 office, and authorized to conduct the staff election by the body solely authorized to regulate and adjudicate all Union election matters—the Arbitration Committee. This entitlement is part of the legal rights of the Applicant under his contract of appointment and stems from staff rule 8.1(d). The unlawful decisions conveyed in the email broadcast of 4 January 2017 will therefore cause the Applicant irreparable harm to his professional reputation and breach some of his basic fundamental rights, including the right to equal protection under the law and unequivocal Staff Rules and Regulations as anyone else (art 7 of the Universal Declaration of Human Rights).

4. The Respondent's contentions may be summarized as follows:

Receivability

a. There is no factual basis for the Applicant's assertion that any administrative decisions have been taken. The actions of the Administration have been limited to circulating a broadcast email at the request of UNISERV and CCISUA. No list of eligible voters has been issued. The Office of Legal Affairs ("OLA") merely provided legal advice limited to whether the proposed amendments to the Statute and Regulations of the Staff Union

respected the principle of equitable representation to all staff members, as enshrined in staff regulation 8.1. None of these actions are administrative decisions under art. 2.1(a) of the Dispute Tribunal's Statute;

b. Under art. 2.1(a) of its Statute, the Dispute Tribunal has jurisdiction to hear applications challenging administrative decisions that are alleged to be in non-compliance with the terms of appointment or the contract of employment. An administrative decision is a unilateral decision taken by the administration in a precise individual case which produces direct legal consequences to the legal order (*Hamad* 2012-UNAT-269). The Appeals Tribunal has held that "to be reviewable, the administrative decision must have direct legal consequences on an individual's terms of appointment" (see *Nguyen-Kropp & Postica* 2015-UNAT-509);

c. It is well established that the Dispute Tribunal does not have jurisdiction under the Statute to entertain any disputes arising from a challenge to union elections (see *Kisambira* Order No. 80 (NY/2014)). Additionally, the Dispute Tribunal has no general jurisdiction to review or supervise the internal affairs of a staff association (see *Kisambira* Order No. 36 (NY/2011), para. 17; *Hassanin* Order No. 83 (NY/2011), paras. 35 and 37; *Saffir* UNDT/2013/019, para. 36). Nor does the Dispute Tribunal have jurisdiction to enforce the decisions of the Union's Arbitration Committee (*Kisambira*, UNDT/2015/085);

d. The Applicant has not identified how the circulation of the email or OLA's legal advice concerning the application of the staff regulation 8.1 to the proposed amendments to the UNSU Statute and Regulations violated any of the terms of his appointment. Under staff rule 8.1, the Applicant has the right to join a staff union. None of the contested decisions impact on that right. He retains his right of free association. The UNSU Statute and Regulations do not form any part of the terms of his appointment. His status

as a polling officer is a UNSU internal matter and not subject to the jurisdiction of the Dispute Tribunal;

e. Furthermore, the Applicant is asking the Dispute Tribunal to decide that only the polling officers recognized by the UNSU Arbitration Committee decision of 21 October 2015 are validly appointed. In order to do so, the Dispute Tribunal would have to review the internal affairs of UNSU, which it may not do;

f. Lastly, the Dispute Tribunal does not have subject-matter jurisdiction to suspend a decision that has already been implemented (*Nwuke* UNDT/2012/002, *Tiwathia* UNDT/2012/109, *Laurenti* UNDT Order No. 243 (NBI/2013)). OLA already provided its legal advice. By its very nature, legal advice cannot be suspended once it has been conveyed. The broadcast email that the Applicant alleges amounts to interference has already been sent. Even if these actions amount to administrative decisions, they have already been implemented;

Prima facie unlawfulness

g. The Applicant has not provided any evidence that any of the contested actions have, in fact, been taken. Firstly, the Applicant has provided no evidence to support his assertion that the Administration has provided the names of eligible voters or that the Administration has interfered in union matters. The Administration has not provided the names of eligible voters to any polling officers. It merely approved the broadcast of an email from CCISUA and UNISERV to all staff members at Headquarters;

h. Secondly, OLA has not made any decision, but has merely provided legal advice. OLA legal advice was limited to the question of whether the proposed amendments to the UNSU Statute and Regulations comported with the principle that all staff members be afforded equal representation, as required by staff regulation 8.1;

Urgency

- i. The Applicant has provided no evidence that there is any urgency in this case;

Irreparable harm

- j. The Applicant has not identified any harm that will be caused to him by any action of the Administration. The Applicant's right to free association has been respected by the Administration.

Consideration

Applicable law

5. Art. 10.2 of the Tribunal's Statute states:

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.

6. The Tribunal considers that an order on interim measures may be granted at the request of the parties when the following cumulative conditions are met:

- a. The motion for interim measures is filed in connection with a pending application on the merits before the Tribunal, anytime during the proceedings;
- b. The application does not concern issues of appointment, promotion or termination;

- c. The interim measure(s) ordered by the Tribunal must provide solely a temporary relief to either party, such relief being neither definitive by nature nor having the effect of disposing of the substantive case in relation to which the application for interim measures is filed;
- d. The contested administrative decision appears *prima facie* to be unlawful;
- e. There is a particular urgency in requesting the interim measures;
- f. The implementation of the contested administrative decision would cause irreparable damage.

Discussion

7. The Tribunal notes that the Applicant's motion for interim measures is filed in connection with a currently pending application on the merits before the Tribunal filed on 16 January 2017 and does not pertain to issues relating to appointment, promotion or termination. The first and second conditions mentioned above are accordingly fulfilled.

8. With respect to the third condition, the Tribunal notes that the application on interim measures refers to the suspension of the implementation of the following decisions:

- 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”.

9. The Applicant states that these decisions were part of the 4 January 2017 email broadcast to the staff at the Headquarters in New York, jointly signed by Mr. IR, President of CCISUA and Mr. DS, President of UNISERV with the following content:

Dear Colleagues in New York,

You will be aware that elections have not taken place for the United Nations Staff Union (UNSU), which represents UN Secretariat staff in New York, within the period required by the Staff Regulation 8.1(b) of two years. Further, the elections that took place in December 2013 were contested.

The impasse surrounding the situation has since prevented the holding of new elections, during which time the effectiveness of staff representation has been undermined.

We believe that given the arrival of a new Secretary-General and a heavy reform agenda, having a newly-elected union in place as early as possible in 2017 is essential.

Given the difficult history surrounding past elections in New York and in light of a vote by a significant number of New York staff requesting that CCISUA (Coordinating Committee of International Staff Unions and Associations – www.ccisua.org) and UNISERV staff federations organize elections, and also noting that the terms of office of the bodies that would normally ensure elections in New York are now expired with no apparent legal means of re-establishing them, we will undertake the following:

- CCISUA 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 Arbitration Committee will settle any disputes relating to these elections.

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-content/uploads/2017/01/UNSU-transitional-statutes-marked.docx](http://www.ccisua.org/wp-content/uploads/2017/01/UNSU-transitional-statutes-marked.docx). It should be noted that the sole purpose of these transitional statutes is to enable the organization and completion of the 2017 first quarter elections. They will not confer on CCISUA nor UNISERV a mandate to speak directly for UNSU nor to directly represent staff in New York in dealings with management or other parties.

We expect the elections to be completed by early March.

We will provide you with regular updates with the aim of ensuring transparency and confidence in the process.

Please accept our best wishes for 2017

[Mr. IR], President of CCISUA

[Mr. DS], President of UNISERV

10. The Tribunal notes that in accordance with documents submitted by the Applicant, on 4 January 2017, a petition was submitted before the UNSU Arbitration Committee regarding the 4 January 2017 email broadcast. On 5 January 2017, the UNSU Arbitration Committee issued its decision stating, *inter alia*,

Considerations:

In its response dated 27 December 2016, the Committee determined that 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. The Committee, however, made no determination as to the validity of holding a new election, while the previously elected Leadership and 45th Staff Council of the Union have not yet taken office, or as to the proposed manner of conducting it.

In its response dated 4 January 2017, the Committee determined that [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. The same applies to [Mr. DSMt., Dimitri Samaras,

The broadcast purports that:

“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.ccislla.01.glwp-contentLuploads/2017/01/UNSU-transitional-statutes-marked.docx>. It should be noted that the sole purpose of these transitional statutes is to enable the organization and completion of the 2017 first quarter elections, They will not confer on CCISUA nor UNISERV a mandate to speak directly for UNSU nor to directly represent staff in New York in dealings with management or other parties.”

As per Statute 19:

19 Amendment

This Statute shall be amended by referendum.

The rules for holding a referendum are stipulated in Regulation 6.18.

That is, the Statute provides but one and only one way to amend its articles - through referendum. Amendments introduced through any other means are, therefore illegal, and hence null and void.

Further, according to Article VIII, Regulation 8.1 (b) of the Staff Rules and Staff Regulations of the United Nations, published in the Secretary-General’s Bulletin ST/SGB/2014/1 of 16 April 2014:

Regulation 8.1

(b) Staff representative bodies shall be established and shall be entitled to initiate proposals to the Secretary-General for the purpose set forth in paragraph (a) above. They shall be organized in such a way as to afford equitable representation to all staff members, by means of elections that shall take place at least biennially under electoral regulations drawn up by the respective staff representative body and agreed to by the Secretary-General.

Thus, the Staff Rules and Staff Regulations clearly establish the imperative of the approval of Secretary-General to any amendments made to the Statute and Regulations of staff representative bodies. It is not clear what the Office of Legal Adviser is or what authority it has to

approve amendments to the Statute and Regulations of the Union made illegally.

In view of the above considerations, the Committee has decided that all the actions concerning the new election stipulated in the broadcast are in violation of the Statute and Regulations of the Union.

Decisions and conclusions:

The Committee has decided that all the actions concerning the new election stipulated in the broadcast are in violation of the Statute and Regulations of the Union. Specifically, the Committee also has determined that the amendments to the Statute and Regulations of the Union are illegal, and hence null and void.

The Committee finds it necessary to address some of the points in the broadcast which fall under its mandate.

The broadcast purports that:

“ ... also noting that the terms of office of the bodies that would normally ensure elections in New York are now expired with no apparent legal means of reestablishing them. ..”

As per Regulations 6.2 and 6.3:

6.2 The Polling Officers shall be nominated and elected for two years by the Unit Chairpersons, who shall be convened to that end by the Chairperson of the Staff Council. Unit Chairpersons shall determine their own rules of procedure for the nominations and election of Polling Officers.

6.3 The Polling Officers shall take office immediately upon election and elect their Chairperson. They shall serve until new Polling Officers have been elected as prescribed above.

As results from the above consideration, the Committee has determined in its response dated 21 October 2015 that the Polling Officers of the 45th Staff Council shall continue to hold office and serve until new Polling Officers have been elected by the Council once it has taken full office in accordance with Regulation 6.3. The Committee further found it necessary to authorize the Polling Officers to start making the necessary preparations for the general election with the expectation that the Polling Officers would be consulting with the 45th Staff Council on the appropriate time and course of action to hold the general election. There is therefore no basis for the contentions made in the broadcast.

The broadcast beats the old drum that the “the elections that took place in December 2013 were contested”. The Committee again points to its correspondence to Mr. Yukio Takasu of 24 January 2014, joint communication dated 22 October 2014, and decisions dated 6 December 2013, 18 March 2014, and 14 May 2015, in which it confirmed that the general staff election was conducted via a valid process and hence upheld the outcome of the election. The outcome of the election was subsequently recognized by the Dispute Tribunal in *Hassanin* UNDT/NY/2016/181.

Finally, the Committee recognizes the arrival of a new Secretary-General and the heavy reform agenda he brings. The Committee wishes a new Secretary-General success, but holds that there is no reform more essential than upholding the law.

11. The Tribunal takes judicial notice of the fact that, on 16 January 2017, at 9:57 a.m., an update on the staff elections in New York was broadcasted on behalf of Mr. IR and Mr. DS, announcing the names of the polling officers, the name of the members of the UNSU Arbitration Committee and the names of the Observers. This decision was not mentioned and or contested in the present case.

12. The Tribunal underlines that the UNSU Arbitration Committee appears to be the only body having the competence to decide over a dispute arising over the interpretation of UNSU Statute and its Regulations (see art. 17.2 and 8.3 of the UNSU Statute). Furthermore, according to art. 8.2.3 and 8.2.5 of the UNSU Statute and Regulations, the Arbitration Committee has exclusive competence to receive, consider and issue binding rulings upon matters related to violations of the UNSU Statute and Regulations. Consequently, and, as already mentioned by the Tribunal, all alleged violations of the UNSU Statute, including those referring to the UNSU elections, therefore seems to be referred only to the Arbitration Committee, as these provisions are mandatory.

13. The purpose of an interim measure is not to grant final resolution but only temporary relief, pending the outcome of substantive proceedings. The Tribunal finds that, in the present case, should the interim measure sought be granted, the Tribunal would effectively be adjudicating on the receivability and on the merits on the contested decisions, thereby in effect disposing of the application on the merits in

relation to which the application for interim measures is filed.

14. The Tribunal will therefore not solely provide a temporary relief as required. Since one of the above-mentioned cumulative conditions is not fulfilled, the Tribunal need not consider whether the remaining requirements, namely *prima facie* unlawfulness, urgency and irreparable damage, are met.

Order

15. In the light of the foregoing the Tribunal ORDERS

The present application for interim measures is rejected.

(Signed)

Judge Alessandra Greceanu

Dated this 20th day of January 2017