



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2014/004

Order No.: 31 (NY/2014)

Date: 10 February 2014

Original: English

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

Background

6. The factual background to this ~~from~~ mirrors that which is fully discussed in Order No.18 (NY/2014) and ~~ed~~ not be fully repeated herein. In November 2013, the President of the ~~4th~~ 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 ~~4th~~ Staff Council and the Leadership of the UNSU, requesting his intervention ~~insuring~~ a fair electoral process scheduled on 11 December 2013 or thereabouts. The ~~Arbitration~~ Committee expressed concern over aspects of the process and ~~recomm~~ed that the Polling Officers and Staff Council resolve matters before any ~~electio~~ns held. Thereafter, in late November and early December 2013, the ~~Arbitration~~ Committee issued further rulings containing various ~~recomm~~endations regarding the conduct of the elections.

7. On 6 December 2013, the ~~Chief de~~puty of the Secretary-General replied to the UNSU President's ~~Nove~~

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 4th 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 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 seeking 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 4th 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 4th 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, *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

Furthermore, if any member of the UNS

Order

21. The present motion for interim measures is rejected.

(Signed)

Judge Ebrahim-Carstens

Dated this 10th day of February 2014