

## Can FICSA members extend Union membership to non-staff personnel? Should they?

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During the 73rd FICSA Council (agenda item no. 12 in the Ad-Hoc Committee on Strategic Development), FICSA members discussed the pros and cons of extending union membership to non-international civil servants and consultants. The United Nations Joint Inspection Unit (JIU) refers to this workforce collectively as “non-staff personnel” and it composes more than 35% of the United Nations system workforce.

The prevalence of non-staff personnel varies greatly depending on the organization. In UNOPS, UNDP, UNIDO and WFP, non-staff personnel are over 60% of the workforce; in ITU, WMO and WIPO, they are less than 10%.<sup>1</sup>

At the United Nations system level, there is no universal definition of a “consultant”, “non-international civil servant” or “non-staff personnel”. Non-staff personnel, including consultants, can refer to any person in a contractual relationship with an organization who is not subject to the staff regulations and staff rules.

Legally speaking, FICSA members can include non-staff personnel, such as consultants, as members because the **freedom of association is a fundamental right** that binds international organizations.<sup>2</sup> International organizations are obliged to respect the freedom of association irrespective of whether this principle is written in their staff regulations. They therefore are precluded from interfering in a staff association’s internal affairs.<sup>3</sup> In accordance with the freedom of association, the ILO Administrative Tribunal and other authoritative sources indicate that staff associations and unions are free to regulate their internal affairs, including prescribing rules for membership. The freedom of association also empowers consultants, like all workers, to join associations/unions of their choice.

Three FICSA member staff associations/unions already include consultants and non-staff personnel as members. In two associations, consultants are full members who pay dues and have voting rights. No other FICSA member has yet to extend membership to non-staff personnel, but there are many relevant examples at the national level.<sup>4</sup>

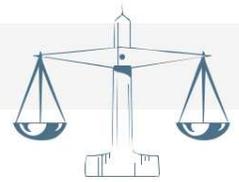
### Should FICSA members represent non-staff personnel?

Organizations have asserted that non-staff personnel are needed for operations or due to budget constraints. However, precarious forms of employment such as consultancy contracts may threaten staff members’ rights. Advantages and disadvantages of representing non-staff personnel are outlined below.

In organizations with a significant number of non-staff personnel, staff associations could increase their membership, financial resources and negotiating influence by extending representation to them.

Staff associations could help improve the conditions and morale of the overall United Nations system workforce by ensuring that organizations comply with international labor principles when hiring non-staff personnel. This could protect staff members’ rights and their jobs, by preventing outsourcing of posts or weakening of employment conditions.

Staff associations also could help ensure that consultants do not have de facto employment relationships with international organizations. The JIU has found that “[i]n many organizations, some non-staff personnel work for long periods with short-term contracts under a de facto employment relationship [in violation of ...] internationally accepted labour principles.”<sup>5</sup> Non-staff personnel may have a de facto employment relationship with an international organization if they:



## Disadvantages of representing non-staff personnel

Staff members may not understand the immediate benefits of extending union membership to non-staff personnel. The interests of staff members and non-staff personnel may not always be aligned. While it should be beneficial to all workers if non-staff personnel are treated in accordance with international labor principles, opinions on how to achieve this may differ. Staff members might prefer that consultants be hired less frequently and with stringent rules to avoid de facto employment relationships. Consultants may favor more flexibility in contract arrangements or may desire benefits traditionally provided to staff.

Staff members are bound by their respective staff regulations and staff rules and the ICSC Code of Conduct, but these norms may not necessarily be replicated in the general conditions of contract for non-staff personnel. Organizations may also differ greatly in how they hire non-staff personnel. Some organizations hire them through the human resources department, while others utilize a procurement process. This leads to different contract modalities that may make it difficult for staff associations to adopt a unified approach towards non-staff personnel, even at the organizational level.

From a practical perspective, if staff associations accepted non-staff personnel/consultants as members, amendments to staff associations' constitutions and by-laws must be made. Staff associations should also consider amending recognition agreements with the organization's management to ensure that they will continue to be recognized.

In some cases, it may not be politically feasible at this time for staff associations to include non-staff personnel as members. At least one organization's legal office is of the view that consultants and non-staff personnel do not have the right to associate and or join the organization's staff association because the staff regulations and rules do not permit it. While this may be incorrect from a legal point a view, there is nevertheless a possibility that staff associations would risk not being recognized if they proceeded to represent non-staff personnel despite management's disapproval.

- Work under control and direct supervision of staff;
- Work full time from the organization's premises, subject to regular staff hours;
- Are provided with an office, desk, phone and email account;
- Are subject to performance assessments and the same code of conduct as staff;
- Perform duties similar to staff members;
- Receive social benefits such as annual leave, maternity leave and medical insurance;
- Have managerial authority, sometimes over staff members.

There is also a void in leadership and coordination of non-staff personnel at the system-wide level. The International Civil Service Commission governs only the employment conditions of staff and has no mandate to address non-staff matters. In addition, the United Nations Secretary-General has so far resisted a JIU recommendation to initiate harmonization efforts under the authority of the UN System Chief Executive Board for Coordination.

Staff associations and unions could help fill this void by organizing non-staff personnel and facilitating negotiations with management to harmonize conditions of service for non-staff personnel throughout the various organizations.

These could be win-win opportunities for staff associations, staff members, non-staff personnel and the organizations. Staff associations could see increased membership, resources and clout when dealing with management. Regular staff might perceive less risk that their work could be outsourced to non-staff personnel. Non-staff personnel could receive fairer treatment. Organizations could better comply with international labour principles, their duty of care and ensure staff-wide acceptance of their approaches towards non-staff personnel.