



# Duty of management to consult with Staff Unions on conditions of Service Freedom of Association

**Laurence Fauth**

Legal Advisor to the IAEA Staff Council

*Article only available in English*

In its 129th session the ILO Administrative Tribunal in Geneva decided an appeal filed by the FAO Union of General Service Staff reaffirming the fundamental rights of staff unions to freedom of association, and in particular, the right of consultation with management on the terms and conditions of employment. The ILOAT is the court that decides employment disputes between international civil servants and international organizations, and is one of the critical institutions for preserving Union rights to freedom of association.

The Judgment is No. 4230 issued on 10 February 2020. FAO's management introduced a Circular, with retroactive effect, imposing a maximum length of employment for holders of short-term appointments under by FAO's staff rules. Management announced that it was issuing the Circular with immediate effect during a Staff Management Consultative Committee meeting. The Union demanded more time to consider the new rules in the Circular and to engage in real consultations. Management argued that there was an "emergency" situation and it could not wait to issue the Circular, and that the discussions during the Committee meeting were sufficient to hear and consider the Union's views.

The Union filed an internal appeal on the grounds that management had violated the Union-Management Recognition Agreement, Staff Rule 302.8.3 which provides that *"the Director-General shall, before issuing administrative instructions or directives on matters relating to terms and conditions of employment or affecting the welfare of the staff,*

*consult the recognized staff representative body or bodies concerned and shall take due account of their comments"*, and the Standards of Conduct of the International Civil Service (para. 30 pertaining to staff-management relations and freedom of association). The majority of the internal appeals committee agreed with the Union that no proper consultation had taken place, and recommended that the new rule be suspended until *"proper and meaningful"* consultations take place. The appeal was rejected by the FAO Director General, and the appeal was filed with the ILOAT.

The ILOAT found that there had not been any proper consultation and ruled in favour of the Union. The ILOAT clarified what consultation requires: *"proper consultation must allow a reasonable amount of time for the consulted body to discuss the issue, have its principal questions answered and provide reasoned advice or recommendations, and must also allow time for the deciding authority to take that advice into consideration prior to taking the decision"*. The Tribunal rejected management's excuse that there were "emergency" circumstances justifying the lack of consultation and that indeed management had acted in *"bad faith"* by making this excuse for not allowing meaningful consultation with the Union.

This is a significant case and a strong reminder to management that it must consult with staff representatives when it is proposing changes to employees' conditions of service.