

November – December 2012

Consultation and negotiation procedures between management and staff representatives

The elaboration of provisions related to employment conditions within international organizations takes place at many different levels. Within the UN common system, the most important decision making bodies in this area are the International Civil Service Commission (ICSC), the UN High Level Committee on Management (HLCM), the HR Network, the Chief Executive Board (CEB) and the Fifth Committee of the UN General Assembly. At the organization's level, it is its legislative body, which is most of the time the governing body comprising the Member States, which will adopt any changes to the labour conditions suggested by the organization's secretariat, which will itself mostly implement decisions taken by the UN common system machinery. As the organizations and agencies do enjoy a certain degree of autonomy, some working conditions can nevertheless vary from one organization to the next.

The staff directly impacted by any changes brought to its labour rights has generally only limited influence on their elaboration. Thus, the Staff Regulations and Rules of international organizations generally only foresee that the head of an organization has to consult with the staff representatives before deciding staff related matters. The ILOAT found that consultation could not be equated to negotiation, meaning that the legal power remains in this case in the hands of the decision-maker, which can take unilateral decisions diminished only by the duty to consult. There is no equality of bargaining power, and where there is only obligation to consult for the Tribunal, the decision-maker's duty is to listen or at most to exchange views. (ILOAT Judgment n° 380, under consideration 21, see also ILOAT Judgments n° 1020 and 1062). The Administration is nevertheless in clear breach of the law should it fail to consult the Staff representation (ILOAT Judgment n° 2036). Obviously, the fact that decisions are taken at many various levels within the UN Common system, makes it even more difficult to exert a direct influence on the decision making process, even if FICSA participates in most of the UN common system machinery (without veto right!).

But a few international organisations have gone further and accepted to put in place mechanisms accepting collective bargaining and collective agreements. The European Space Agency (ESA) or the European Organization for Nuclear Research (CERN) have had a long experience with negotiation mechanisms. Thus, at CERN, the Staff Rules and Regulation stipulate that general matters concerning the personnel shall be subject to discussion between the Director-General and the Staff Association. "Discussion shall mean a procedure whereby the Director-General and the Staff Association concert together to try to reach a common position." For this purpose the former Standing Advisory Committee was changed into a "Standing Concertation Committee (SCC)", in which any proposed measures of a general nature regarding the conditions of employment or association of members of the personnel are the subject of discussion. ESA has itself since 1984 a unique negotiation procedure to facilitate consensus, which also comprises at the last stage a Conciliation Board whose

members are independent. They cannot be members of the staff, the delegation of the Members States or the management.

Staff should therefore lobby for the implementation of joint machinery in which it has not only the possibility to be consulted but to really exert a decisive influence on the outcome of its working conditions. This is also in the interest of the overall efficiency of an international organization. As the example of ESA shows, the numbers of recourses before its Appeals Board have dropped since the establishment of the new negotiation procedure.

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