

REQU: 21.10.08	NO: 400	
ROUTING:	Ini.	Date
PRESIDENT	CV	29/10
SEC GEN		
cc: V. S. C.		
SECRETARIAT		

Findings of the Review Panel

These findings are on the basis of specific allegations made by the Staff Union in a letter addressed to the Review Panel on 5 September 2008. The Panel notes with appreciation that both the Administration and the Staff Union have agreed to a prolongation of the Panel's review beyond the 15 days stipulated in the collective bargaining agreement establishing this panel. We, the Panel members, wish to address the three specific questions posed us in the Staff Union's letter of 5 September. We also wish to address the more detailed allegations of deviations from the letter of the collective bargaining agreement between the Administration and the Staff Union on recruitment and selection procedures. This unanimous opinion of the Review Panel addresses the foregoing points. We organize our response on the basis of the three questions asked of us in the Staff Union's letter of 5 September.

"The Staff Union therefore asks the Review Panel to review the decision from the Office to substantially change the procedure for recruitment and selection established by the collective agreement and other texts, unilaterally and without negotiation."

As its first observation, the Review Panel finds that there is a difference of opinion between the Staff Union and the Administration over changes made in the procedure for recruitment and selection in two areas. First, while the Staff Union regards the changes made as "substantial", the Administration holds that the changes are in fact "minor", ("micro details", in the view of one Administration official), a process of fine tuning existing procedures without a change in their substance. Moreover, the Administration states that, in any case, the Administration had been unilaterally making adjustments to the procedure for some time, without the objection of the previous Staff Union leadership. Second, the Administration holds that changes in the Assessment Centre procedure are, in fact, the Administration's to make unilaterally, as they constitute a managerial prerogative.

The Review Panel believes that it is not necessary for it to offer an opinion as to whether it views the changes as "substantial" or "minor" or somewhere in between. It is the second matter, the Administration's construction of managerial prerogative that the Review Panel considers to be the matter of substance, and on which it comments below.

"The Staff Union asks the Review Panel to consider whether the unilateral decision from the Administration has been taken in breach of the collective agreements in force and, if so, to make recommendations for remedying the situation."

The Review Panel finds that the changes made in the structure and operation of the Assessment Centre should indeed have been the subject of negotiation with the Staff Union. It agrees that the unilateral changes are, in breach of the collective bargaining agreement as well as of Annex 1 of the Staff Regulations The Review Panel feels

however that, however significant in its own right, the breach is expressive of (and probably the result of) a broader problem – the current industrial relations climate in the Office. We return to this matter. We observe that “past practice”, i.e. the Staff Union’s apparent non-objection of the Administration’s changes to the assessment process is not sufficient in the end to override or overlook what the parties had agreed to in collective bargaining, once one party or the other evokes it.

In its discussions with both parties, the Review Panel felt that the mutual level of distrust was pronounced. The Administration, for example, believed that the Staff Union’s complaints related less to substance than to the desire to “negotiate everything”. Were this to happen, the Administration believed that the Office’s ability to function would be “bogged down”, that decision-making “would grind to a halt” – in short, that management would be paralyzed.

For its part, the Staff Union noted a distinct “erosion of social dialogue” in the Office, a “move away” from collective bargaining and from respect for existing collective bargaining agreements. The Administration was perceived as believing itself a “prisoner” of the collective agreements. The Administration, in the view of the Staff Union, was “chipping away at [the staff’s] rights” and that, neither in their substance nor their timing could “consultations” said to be “real”.

“The Review Panel is also requested to provide advice to the parties on re-launching negotiations on amendments to the provisions of the current collective agreement or a new collective agreement, along with implementing texts including guidelines on recruitment and selection.”

We, the members of the Review Panel, have given consideration to what we believe to be the way forward. We would like to begin with what we believe are some “positives”.

1. Both parties, in writing as well as orally, have stated their willingness to recommence negotiations to amend the existing selection and recruitment procedures.
2. Even if the parties believe respectively that the other party is being inflexible or intransigent, we believe that it could be worse. We note, for example, that the Staff Union could have simply boycotted the RAPS process, and yet it did not do so.
3. The Staff Union readily acknowledges that there are certain decisions that are indeed management prerogatives and that are therefore the Administration’s unilaterally to take.

Having highlighted a current climate of mutual distrust, we believe that this is a matter that needs to be immediately addressed. We feel that there are two essential prerequisites to do so:

What is negotiable and what is not?

First, the Staff Union should reconfirm its acknowledgment that certain decisions are the unilateral prerogative of management, while the Administration should acknowledge that changes to the Assessment Centre or other changes to the Selection and Recruitment procedure are subject to procedures that are set forth in an existing collective bargaining agreement and cannot, therefore, be unilaterally abrogated.

Second, and closely related to the first, we believe that clarity is needed on just what are "managerial prerogatives" under the collective bargaining agreement in question, and just what, on the contrary, are matters that require information, consultation, and/or negotiation. We believe that the absence of such clarity has played a significant role in bringing us where we are today. As just one example, the Administration believes that the Staff Union should have no role to play in the identification of competencies to be assessed. The Staff Union believes, on the contrary, that it has been given the authority to play such a role in Article 1.3 of the relevant collective bargaining agreement. The Review Panel's assessment of the Collective Agreement is set out below.

We believe, nevertheless, that clarity in roles and responsibilities under the collective bargaining agreement can indeed be found and would be a necessary part of the negotiations on-going with a view to a new agreement. Should the parties wish to set up a small workgroup to make recommendations on what it identifies as management prerogatives and those that are not, this would, in our view, be a step forward. Should the parties, on the other hand, wish to entrust this task to the Review Panel for subsequent review by the parties, this would be another option. In any event, we believe that this is a step that must be taken immediately.

Steps Back to the Bargaining Table

In the opinion of the Review Panel, several of the matters referred to it that stem from the issuing of the briefing note of the Recruitment, Assignment and Placement System concern matters that should have been the subject of negotiation with the Staff Union. In this regard, the Review Panel would refer to the questions of: a) the period of two weeks for the announcement of in-grade transfers; b) the short-listing of internal candidates; c) the timing, role and content of the recruitment process with respect to the assessment centre and; d) the competencies to be evaluated by the assessment centre.

The Review Panel understands that discrepancies from the Collective Agreement in relation to the screening of internal candidates and the timing of the assessment centre may actually have existed already before the introduction of the RAPS. The establishment of the RAPS would however be the first time that these were formalized. The Review Panel considers that these two matters (points b) and c) above should be part of the ongoing negotiations for a new Agreement on recruitment and selection. In the meantime any deviations from the process specified in articles 4.2 and 4.3 of the Collective Agreement should be mutually agreed upon. The Review Panel further understands from indications provided by the Administration that the competencies to be evaluated by the assessment centre have been reviewed and that the core competencies of integrity and transparency and sensitivity to diversity have been reattributed to the centre. Any further question regarding competencies to be included in the assessment centre or not (point d) above) should be agreed between

the Staff Union and the Administration as provided in article 1.3 of the Collective Agreement. The period for announcing in-grade transfers (point a) above) should not be less than one calendar month, in accordance with article 3.7 of the Collective Agreement. Ongoing negotiations on a new agreement should also cover this matter.

The Review Panel has understood from the Administration that there is no deviation from the pre-RAPS period in relation to the responsibility of Chiefs for ensuring the technical evaluation of all candidates who have successfully completed the Assessment Centre. It further takes due note of the Administration's confirmation that the Staff Union's evaluation of vacancy announcements in relation to the opening of competitions to external candidates is, and will continue to be, given serious consideration, but that the final decision will be taken by HRD and the responsible chief in line with Annex I, paragraph 8 of the Staff Regulations. The Review Panel understands that any comments in this regard that the Staff Union representatives may have on vacancy announcements will be discussed with a view to reaching an agreement (section 3.4 of the Agreement). However, the Review Panel also understands from its discussion with the Staff Union that there is no dispute as to the final decision being a management prerogative. In these circumstances, the Review Panel does not consider that there has been a breach of the Collective Agreement on the latter two points.

Finally, the Staff Union refers to guidelines for the technical assessment of candidates which, according to article 5.1 of the Collective Agreement, are to be agreed by the Staff Union and the Office. It claims that they have been unilaterally replaced by the Administration. The Review Panel has not been informed of any particular guidelines that would have been agreed upon in the past in this regard, nor does it consider that paragraph 23 of the Briefing Note can actually be considered as "guidelines" for the purpose of article 5.1. The Review Panel therefore suggests that the question of guidelines for technical assessment be a matter for the on-going negotiations towards a new collective agreement.

The Review Panel believes that, in light of the above, the Briefing Note should have been the subject of prior consultation with the Staff Union and might have thus avoided some of the matters of dispute that followed.

Concluding Remark

We, the members of the Review Panel, recommend these steps as a means of resolving the current differences between the parties. We stand ready to assist the parties in any way we can, should the parties so choose.

Having said this, we strongly believe that the services of an independent mediator could be most useful at this juncture. The Review Panel has some ideas in mind in this regard. Having defined the essence of the problem as one of mutual distrust or suspicion, this is precisely the terrain for which an independent voice could be useful.

A post-scriptum. The Review Panel unanimously found the timing and the content of Staff Union Bulletin No. 1386, dated 22 October 2008, to be unhelpful. It is

emblematic of the central issue that we have isolated – i.e. the adverse industrial relations climate, the negative contours of which it inflames. It is inappropriately timed as a Review Panel process is in progress. It is a Bulletin that arguably calls into question the credibility of the Review Panel. The Review Panel understands that the Staff Union has its own exigencies, such as the upcoming General Assembly in publishing such a bulletin. The Review Panel understands that the publication of this Bulletin is fully within the prerogatives of the Staff Union and that it is not a matter under review. The Review Panel will respond to this matter in fuller detail in a separate comment, with copy to the Administration.

This is the opinion of the Review Panel.



Karen Curtis



Duncan Campbell



Hans Hofmeijer

28 October 2008