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17th and Constitution Ave., N.W. • Washington, D.C. 20006

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Mr. Rene Gutierrez
President
OAS Staff Association
1889 F Street, N.W., Suite 838/A
Washington, D.C. 20006

Dear Mr. Gutierrez:

The Secretary General has asked me to respond to your letter of October 17th last requesting revision of the provisions of the Staff Rules and General standards that require an incumbent of a reclassified post to win a competition to that post before he/she may be promoted to the new grade of the post. You state that the Staff Committee considers that the competition requirement for incumbents of reclassified posts should be eliminated, as was done on a one-time basis for the Secretariat-wide reclassification in 1994-95, when the Secretariat, at the direction of the General Assembly, changed from its own *sui generis* classification system to the United Nations classification system.

You might be interested in knowing that the competition rule for promotion originated with a prior Staff Committee in the early 1980s. At that time, the Staff Committee strongly advocated the rule as part of a new salary policy and the establishment of the career service for several reasons. One reason was to open up promotion opportunities to all staff members. Many staff members occupied posts which had little possibility for reclassification, either because the duties would never change or the director did not want to give the opportunity to the incumbents for promotion by assigning new duties to the post. It was thought that it would be fairer to all staff members, and particularly those in dead-end positions, to treat reclassified posts as new vacant positions¹ and open them up for competition. Also, the advocates of the competition requirement argued that its adoption and implementation would chill what was then perceived to be rampant favoritism and cronyism in the promotion process. They argued that directors would think twice about pushing for the promotion of their lesser qualified favorites if they knew that more qualified staff waiting in the wings would most likely apply and be selected

¹ The underlying rationale for this treatment is that a reclassified post is a "new" position primarily because a post is no more than a bundle of functions, and if the functions of the post are materially changed, the end product is a "new post." Moreover, the reclassified post is considered "vacant" as well because it has not been filled by way of competition, and under Article 44(a) of the General Standards, all vacant posts, except trust positions, posts filled by short-term contracts, and posts not funded by the Regular Fund, must be filled by competition. The so called "incumbent" may have been appointed by competition to the pre-reclassified post; but that does not constitute an appointment by competition to the "new" classified post, as required under Article 44(a) and (d) of the General Standards. Thus, to earn the right to appointment to the post on more than just a short-term basis, the so-called "incumbent" must compete for it.

for the reclassified post temporarily occupied by the favorite if the post were to go out to competition. Thus, there are sound motives and reasons underlying the competition requirement.

By the same token, however, the concern the Staff Committee has shown for the welfare of the incumbents of those posts is understandable. Indeed, when the Organization adopted the present policy and the corresponding rules, that same concern was given weighty consideration. But, after balancing the competing policy considerations, the staff, the Administration, and the Member States decided that their mutual interests would be better served by the competition requirement.

Since the competition requirement entered into force in 1983, the General Assembly has suspended it twice at the request of the General Secretariat and the Staff Committee. In both instances, the reason for the suspension was to respond to a unique system-wide crisis caused by extraordinary circumstances – the first to deal with the aftermath of a devastating RIF of unprecedented proportions; and the second to deal with a one-time shift from one classification system to another.

The first suspension of the competition requirement was in 1992-93, to address the unique circumstances resulting from the 1988-89 RIF. During the 1988-89 RIF, approximately 300 positions were eliminated, and an equal number of staff members were separated from service. In order to keep the Secretariat in operation, many of the remaining staff members voluntarily assumed higher-level functions left unattended due to the elimination of those posts. These staff members then worked for several years without receiving or demanding additional compensation for performing those higher-level functions. In 1992, when the financial situation which had given rise to the RIF passed, the Secretary General and Staff Committee, in recognition of the extraordinary effort of those staff members and in view of the large number of posts affected, requested a one-time suspension of the competition requirement from the General Assembly, pending the audit and possible reclassification of the posts of those staff members. Based on those unusual circumstances, the General Assembly, granted the one-time suspension.²

As was the case with the suspension of the competition requirement in 1992-93, the second suspension was enacted in response to another unique system-wide problem – the adoption of a new classification system in 1995, as referenced in your letter. As it turned out, however, the adoption of the new classification system resulted in relatively few promotions. Indeed, after the first round of audits, more than 50% of the posts were classified at a lower level as a result of the adoption of the new classification system.

One of the concerns the Secretariat had in the two instances in which the competition requirement was suspended was its exposure to possible law suits from career staff members

² See Part II, par. A (1) of Resolution AG/Res. 1137 (XXI-O/91). The suspension was in force from January 1992 until December 31, 1993. Unfortunately, the series of reclassifications made during the suspension, pursuant to recommendations by a special *ad hoc* Committee chaired by the former Assistant Secretary General, led to complaints from Member States that many persons had been promoted to higher-level posts without the corresponding qualifications, and this was one of the causes for the Member States' insistence on the adoption of the UN Classification System in Resolution AG/RES. 1275(XXIV-O/94) and 1319 (XXV-O/95).

who might have asserted that they had an acquired right under the then Article 18(c) of the General Standards to compete for any reclassified post.³ Fortunately, no staff members brought suit. We attribute this to the substantial staff solidarity during both crises and the support of the Staff Committee, that had asked for the suspension for 1992-93 and had agreed to the suspension for the switch to the UN classification system in 1995. But, were the General Assembly, at the request of the Administration and staff, to change the competition requirement rule at this time, the possibility of legal challenge should not be disregarded. The challenging staff member's argument would simply be that the competition requirement for promotion to reclassified posts in Articles 18(b)(iv) and (vi), 19(h) and 44 (a) and (d) of the General Standards gives a correlative right to other staff members to compete for appointment to a reclassified post not yet filled by competition.⁴ Whether the Tribunal would consider that to be an acquired right which cannot be changed prospectively is unclear. In the opinion of our lawyers, however, a referendum on the competition requirement preceded by a secretariat-wide discussion of the pertinent issues and manifesting overwhelming support for the elimination of the requirement, would improve the likelihood of defeating such a challenge.

I am told that in the 2001-02 discussions in the CAAP which preceded the adoption of the 2002 amendments to the General Standards establishing continuing contracts and closing off the career service, the issue of requiring the competition for appointment of so-called "incumbents" to reclassified posts did come-up. A large number of Member States initially took the position that all posts, including reclassified posts, must be filled by external recruitment. They excepted from that requirement only trust positions, short term contracts, and certain contracts funded by sources other than the Regular Fund. The Administration and several delegates advanced the position that it was neither practicable nor fair to staff members to require external recruitment for a reclassified post temporarily occupied by the staff member who had been appointed to the

³ Article 18(c) contained the same provisions set out in the present Article 18(b), cited in the following note.

⁴ Those Rules State:

18(b)(iv). The Secretary General shall give preferential consideration to members of the Career Service and, other conditions being equal, to those of greatest seniority in it, to fill vacancies and to continue in service when reductions are made in the staff of the General Secretariat.

18(b)(vi). All promotions of Career Service personnel shall be made by competition in which the evaluation of previous work performance in the General Secretariat shall be taken into account. The competition shall be subject to the provisions on selection contained in Article 44 of these General Standards.

19(h). Promotion. Staff members on continuing contracts may only be promoted by way of the competitive selection process subject to the provisions on selection contained in article 44 of these General Standards.

44(a). Except as provided in Section (b) below, the Secretary General shall fill all vacant posts in the General Secretariat by competition, with the advice of the Advisory Committee on Selection and Promotion appointed by the Secretary General. The President of the Staff Association shall be a member of the Committee and all subcommittees thereof.

44(d). . . . Nonetheless, appointments to reclassified posts funded by the Regular Fund and already occupied by a qualified incumbent under a Series B contract, continuing contract, or Career Service appointment may proceed by way of competition in accordance with the internal recruitment process.

post prior to its transformation and reclassification, and that internal recruitment by competition was a more reasonable process. As a result, the Member States agreed to exempt reclassified posts from the external competition requirement. Nonetheless, they maintained the minimal requirement of an internal competition for such posts under Article 44(d) of the Standards.

In view of the foregoing considerations, the Administration is not convinced at this time that the elimination of the competition requirement for promotion to reclassified posts is in the best interest of the General Secretariat or its staff. There is no doubt that the competition requirement is cumbersome and may put some incumbents at risk of losing their positions. Nonetheless, history shows that there are just a handful of cases where an incumbent in a reclassified post has not been selected for the post. That, though, is a risk established by the Member States for all such incumbents. And, the extra time and effort that the competition demands is a small price to pay for the greater transparency, fairness, and disincentives to cronyism that it guarantees. Furthermore, it would be unwise to assume that the high percentage of incumbents appointed to reclassified posts obviates the need for the requirement. Rather, that result should be construed as an indication that the requirement is serving its purpose – to prevent directors from promoting unqualified incumbents to reclassified posts based on favoritism or other improper motive.

As always, I am available to meet with you and other members of the Staff Committee to discuss this issue further, together with other concerns that you may have.

Very truly yours,



Frank Almaguer
Assistant Secretary for Administration and Finance

cc: Ricardo Dominguez
Louis G. Ferrand
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