

TIP OF THE MONTH

August 2007

CHALLENGING THE SELECTION DECISION

Staff members often feel anguish, resentment, and betrayal when they apply for a higher level post in the organization and another candidate is selected, especially if it is an outside candidate who has shown no loyalty to the organization. When deciding whether to challenge such a decision, three issues are worth noting.

First, following the interview process, the staff member must determine if a decision has been taken not to select the staff member for the post. Sometimes internal candidates for a post are not notified of the hiring decision in writing and only hear about it through office gossip. In this case, if the staff member has not received notice of the decision in writing after a reasonable period of time (1 to 3 months after the interview), a request in writing should be made to the administration. If the staff member receives a bulletin or official announcement regarding the appointment of another candidate to the post, that gives sufficient notice in most cases for triggering the time limits for filing an appeal. The staff member then has to decide whether it is worth challenging the decision. If an appeal is to be lodged, the time limits in the organization's regulations and rules must be followed.

Second, before deciding whether to file an appeal, the staff member will have to determine whether there are reasonable grounds for challenging the decision not to select him or her. In this regard, the organization must guarantee that the competition is held fairly and this requires that the regulations and rules on recruitment be scrupulously followed, and that there is no bias or prejudice on the selection panel. Whether or not procedures were followed is often difficult to determine since the administration will not release information about the selection process on the basis of confidentiality. Nonetheless, the savvy staff member can usually do a good job of gathering information relative to the procedural issues. Sometimes organizations announce that the competition will be completely fair to all applicants by appointing a selection panel consisting of outside experts in the field. Despite the organization's good intentions, the staff member should find that this is a violation of the regulations and rules sufficient to set aside the entire selection process. Staff members often detect bias in the selection process. If the interview or selection panel consists of a staff member with a clear conflict of interest, i.e., the panel member filed harassment charges against the staff member, that may form the basis of a challenge. Another possible ground for challenge is to attack the selected candidate who may not have the requirements specified in the vacancy announcement. This is not an exhaustive list of possible challenges.

Finally, the staff member must decide if the appeal is worth the effort. Staff members sometimes assume that the decision not to select them, if successfully challenged, means that they can either obtain the post or the equivalent to what they would have earned for a contractual period if the decision was not unlawful. In some cases, the organization is directed to hold a new competition. In most cases, the staff member is awarded moral damages and the costs of the appeal. The selected candidate is protected while the aggrieved staff member may suffer further career setbacks (including possible retaliation or abolition of post).

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- I specialize in the representation of international civil servants, and serve as legal advisor to several staff unions/associations of international organizations, some of which are based in Vienna, Austria. For further information, please send me an e-mail or visit my website.