



Social Partnership in the EPO

Ms. Brimelow has declared "Social Partnership" one of her priorities for 2009 and invited the Staff Committee for a mediated meeting with the MAC. The current paper reviews previous attempts at improving (from a management point of view) social relations in the EPO. We analyse some evidence of what may be the administration's goals for the exercise. We also present an overview of what we see as "long felt needs" in staff and staff representation rights, in particular for the statutory Staff Committee, which is undeniably (because statutory!) a social partner of the administration. We hope that the upcoming talks will allow us to address and remedy these deficiencies.

1. Historical background

The current attempt to address and restructure the "social dialogue" in the EPO is not the first one. In the 90's negotiations with Mr. Braendli led to the establishment of the so-called "Prestacom" (President - Staff Committee).

It is interesting to look at the preparatory documents of the Central Staff Committee¹ which shows that many of the present problems, in particular of lack of legal certainty, had already been recognized then and that in fact none seem to have been solved in the mean-time. After a few initial Prestacom meetings the willingness of the President to meet the Staff Committee in direct talks dwindled, and the initiative failed.

Towards the end of his presidency, Mr. Kober undertook another attempt to improve social relations and establish "partnership" relations, first with the Staff (mainly through JAB sessions) but not much later also with the Staff Representation. After the obvious initial distrust, Mr. Kober's initiative was well received by the Staff Representation and facilitated several positive developments for staff such as the "social package" (with amongst others improved maternity leave conditions), a harassment policy and an occupational health policy for the EPO. The latter were implemented (and in case of the harassment policy abandoned again) under President Pompidou. However, the essential negotiations took place under Mr. Kober's presidency.

After Mr. Kober left the situation deteriorated rapidly. Mr. Pompidou explicitly stated that he did not like "partnership" which in his eyes was too much like "co-management". A further degradation of the relations and the social climate has taken place under Ms. Brimelow. What is currently most strongly resented by Staff Representation is the lack of genuine dialogue in view of the attempts of Ms. Brimelow

¹ See <http://www.suepo.org/archive/ex08159cp.pdf>

to portray staff representation as "involved" in policy making. The perception of the staff representation is a different one: in practice there is precious little dialogue and the little there is seems to have a mere alibi function. The latest decision taken despite strong opposition from staff and staff representation was the introduction of a highly contentious new pension scheme for future staff.

2. Aims of "social partnership"

Ms. Brimelow has now announced that she will make "social partnership" one of her top priorities for 2009. While this can be viewed positively it raises the question: Why only now i.e. after considerable damage to the social relations has already been done, and to what end?

In his welcome speech to Ms. Brimelow² in June 2007, Mr. Grossenbacher mentioned a number of goals for the Brimelow administration, most of which have been achieved or are in progress. We cite from his speech:

"The current situation of staff representatives, who, on one hand, are part of the Office and subject to EPO staff regulation and, on the other, leaders of the Staff Union, is unsatisfactory in many regards. To establish a functioning social partnership there should be one partner on each side and clear rules about how to conduct negotiations and solve conflicts. The double role of individuals as staff representatives and Staff Union Representatives blurs the delineation of responsibilities, does not help build trust and hampers the shaping of decisions..."

From this we understand that Mr. Grossenbacher³ wants to abolish either the statutory Staff Committee or the Staff Union. Similar remarks have been heard within the Office. Indeed the administration commissioned a study by the Swiss Institute of Comparative Law that was to answer three questions amongst which the question whether the Organisation could de-recognise the Union (*sic!*). The answer was a "yes, but ... we basically do not recommend it". We therefore expect that the administration will attempt to abolish the statutory Staff Committee and try to commit the Union to binding engagement rules. It is not yet entirely clear whether the administration also wants to abolish, or at least weaken, the local staff representations in favour of a stronger central body.

To date the problem analysis of the MAC on the issues of social partnership has been limited to highlighting what is referred to as the "unacceptable situation". In view of the above-mentioned statements of Mr. Grossenbacher, and the studies commissioned by the administration, we feel justified in viewing the proposed discussions on social partnership with some skepticism, while acknowledging that such discussions do have the *potential* to be beneficial.

We therefore invite the administration to:

1. *state what the aims are with the announced talks, in more concrete terms than "improving the social dialogue" and*
2. *formulate a proper problem analysis as a basis of next year's talks.*

² See <http://www.epo.org/patents/updates/2007/20070709a.html>

³ We note that Mr. Grossenbacher himself has multiple roles as Chairman of the Council, Head of the Swiss delegation and Head of the Swiss national patent office. When speaking in the Council Mr. Grossenbacher does not mention with which hat he is speaking at any given moment. But apparently Mr. Grossenbacher sees no problems with role clarity there.

3. The view of the Central Staff Committee

A whole series of studies⁴ has found that the management style in the EPO is inappropriate for a "knowledge organisation". What we see is:

- a) an increasingly "control and command" style of management, and
- b) an increasing focus on quantity, "efficiency" and financial results to the detriment of quality and service.

The opinions of the Staff and their representation are routinely ignored and or dismissed as being due to a lack of understanding on the side of the staff. A typical reaction (e.g. to the Staff Survey 2006) is: "Yes, we see that we have a problem, so we will have to communicate better". Top management apparently refuses to consider the possibility that staff may be right, and management may be wrong. This is an attitude problem that cannot be solved by a change in structure. Changing structures is a typical EPO approach to solving management problems. As an example: all of DG1, DG2, DG4 and DG5 have been "restructured" at least twice and sometimes 3 times during the last 5 years. This has, however, not solved many problems. Another restructuring of DG1 is expected soon ...

Improvements in the rights of both the Staff Committee and SUEPO are possible and desirable. However, both the Staff Committee and SUEPO wish to adhere to some basic features of the current system, namely:

- representation per place of employment, in view of the specificity of the local culture, local problems, local responses to central issues, etc. We note that this exists in most, if not all, multinational structures,
- maintenance of the dual system of a statutory Staff Committee and Staff Union. Again we note that this is the normal situation in other international organizations as well as in various national systems.
- representation of all staff independent of grade.

The Central Staff Committee welcomes the invitation to talk as an opportunity to discuss and remedy some "long felt needs" of the Staff and their representation. Below we list a number of lacunae (A. to I.) in these rights that we wish to address in the social partnership talks and suggest ways of improving the situation. We believe that by giving both the Staff and the Staff Representation the basic rights that are due to them, the working atmosphere in this Office and the quality of the decision-making processes will improve, to the ultimate benefit of the Office as a whole.

A. Recognition of fundamental rights (human rights) for staff and staff representation

The recognition of fundamental rights (human rights) for EPO staff has long been a claim of the Staff Committee and of SUEPO. A gesture in this direction was made in 1994 when the following paragraph was added as a preamble to the EPO Service Regulations (Codex).

"The Administrative Council and the President of the Office note that when reviewing the law applied to the EPO staff the ILO Tribunal considers not only the legal provisions in force at the

⁴ See e.g.:

[Sociological Diagnosis](#) (Sciences Po, 2001)

[Relationship Management Report and Recommendations](#) (Human Resource Policy Team, 2004)

[Staff Survey 2006](#) and [Staff Survey 2008](#)

[Objectives and Incentives at the EPO](#) (Institut d'Economie Industrielle, 2006)

See also the [Pride Domain Intranet page](#)

European Patent Organisation but also general legal principles, including human rights. The Administrative Council also noted with approval the President's declaration that the Office adheres to the said legal provisions and principles."

This paragraph does not, however, recognize that "general legal principles, including human rights" actually apply to EPO staff. It only states that they are "considered" by the ILO Tribunal "when reviewing the law applied to EPO staff". In practice this paragraph gives EPO staff no firm protection. When Staff tries to rely on such law in internal appeal or before the ILO-AT, both instances tend to stress that the "principles" apply, but that the EPO is not bound by the actual law or the jurisprudence thereon.

The Staff Committee requests that the Office explicitly recognizes a catalogue of fundamental rights for EPO Staff that includes:

- 1. international conventions on human rights,*
- 2. the ILO-AT conventions, including those on labour rights,*
- 3. the social law of both the European Communities and the Council of Europe.*

B. A code of conduct for the EPO, and a proper fraud reporting system

The EPO has, for now, no Code of Conduct, no generally accepted definition of what constitutes fraud, no obligatory registration of potential conflicts of interest and no procedure to denounce fraud that protects the whistle-blower against repercussions from those reported upon. The EPO no longer has a staff dignity policy, a definition of what constitutes harassment or a structured approach to dignity complaints. This lack of an ethical frame-work makes it near impossible to address even relatively obvious offences against generally accepted ethical principles and leaves staff with little or no protection against dignity offences. Lack of respect for staff and their representation seriously hinders meaningful interactions between the administration and the staff representation.

The Staff Committee therefore demands that the Office establishes an ethical framework to be respected by staff at all levels, and the means to denounce and pursue behaviour that is not in line with said framework.

C. Early consultation

The Staff Committee is often confronted with a proposals that affect Staff only when they are submitted to the GAC, and even then these are often submitted only at the deadline for submission, 15 working days before the GAC. Recently the administration has made an attempt to set the deadline for submission at only 10 working days before the GAC. In particular when the proposals are complex and/or when several proposals are submitted this makes an in-depth study with involvement of the staff concerned impossible. The GAC is furthermore not a forum for negotiations, it's mandate is to give an opinion on the documents submitted to it.

The Staff Committee therefore requests early, meaningful involvement in all matters affecting staff, including patent policies. This is necessary to allow the Committee to represent the interests and opinions of the staff and through that improve the quality of the decision-making processes.

D. Representation of both active and retired staff

EPO pensioners are often unhappy with the way they are treated by the Organisation. Retirement conditions are viewed as relatively disadvantageous, due to a *de facto* double taxation. Pensioners complain about lack of access to information and services. Presently the Staff Committee only has the right to represent active staff. Until

recently, retired staff has no voice and no representation at all. In recent years a pensioner is present as an observer in the RFPPS. Although pensioners' interests are still defended by the Staff Committee, the representation of our growing group of pensioners should be strengthened. It would, for instance, be highly desirable to also allow *at least* a pensioner *observer* in the GAC for those topics that affect pensioners. It could also be desirable to strengthen the Pensioners Association.

As a first step, the Staff Committee demands the statutory right to represent and defend the interests of retired staff.

E. Representation of non-permanent staff

The Office is increasingly relying on external staff for work done inside the Office. Presently Staff and the Staff Committee are not even informed about the profile of these staff, their administrative status of these staff, or their contract conditions. Working conditions for permanent staff are, however, strongly influenced by the Office's decisions to hire external staff for any given activity. In addition, external staff working in the Office tends to be or become largely disconnected from the external employer resulting in their being increasingly considered "commodities"⁵ both by the Office and their external employer. External staff are also largely unprotected against pressure for working longer hours, inappropriate behaviour by colleagues etc.

The Staff Committee therefore claims the right to represent non-permanent staff working in the Office in matters of basic rights including, but not limited to, minimal pay and health & safety matters. In addition, the Staff Committee requests to be consulted on the EPO's outsourcing policies and to be informed about and consulted on the employment conditions of contractors. Certain groups of staff (e.g. staff working in the canteens) may on mutual agreement be excluded from direct representation but not from working conditions.

F. Information about and a right to appeal the outcome of tenders and direct placements

The EPO tender procedures are governed by the EPO FinRegs. The Staff Committee is usually not involved in these procedures. In recent years the Office has increasingly resorted to direct placements with the argument of "urgency", also where this was not obvious. For bidders who have lost in the tender procedure a mediation procedure is available. In our opinion this procedure cannot be considered equivalent to the procedure demanded by the European Directives. An appeal launched against a seemingly irregular direct placement launched by a Staff Committee member was considered irreceivable by the Office. If this position is accepted by ILO-AT it would mean that for direct placements there is no possibility to review the decisions of the Office. In view of the size of the EPO's placement budget this is not acceptable.

The Staff Committee therefore claims the right to be informed about, and to be allowed to appeal, the outcome of tenders and direct placements.

G. Status and procedure for appeals by Staff Committee

Presently neither SUEPO nor the Staff Committee has the right to appeal. Although ILO-AT accords to Staff Committee members wider rights to appeal than to "normal" staff, it remains unsatisfactory that the Staff Representation as a body has no standing before ILO-AT. We greatly appreciate the fact that at least in the past the Office (as the only international organisation using ILO-AT) supported this demand from its staff representation. Nevertheless nothing has happened thus far. There is

⁵ The term "commodity" has actually been used by an IS manager when talking of outsourced staff

furthermore no way to prioritise appeals, whether filed by Staff Representatives or others. This means that even highly relevant appeals e.g. on the application of the salary method, on non-consultation of the GAC, on irregular appointments, etc. take 3-4 years. This creates a legal insecurity for the Office and for the Staff that is not desirable. It furthermore tempts the ILO-AT to accept the contested decision even if it is found to be illegal, and merely impose damages.

The Staff Committee therefore requests support from the Office in obtaining locus standi before the ILO-AT, and the right to an accelerated procedure.

H. Independent budget, also for legal advice

The Staff Committee has no independent means, in particular no independent budget. Although the Staff Committee is *informed* as to how much money it can spend annually on traveling and on training, each individual duty travel and every individual training measure requires administration approval. The CSC and local committees have no budget for legal support for staff. This situation is seen as undesirable and inefficient.

The Staff Committee therefore requests truly independent travel and training budgets, and an independent legal budget.

I. Miscellaneous

The above list of issues that we would like to see addressed in the social partnership discussions is not exhaustive. Our need for information about the working conditions of external staff and about the outcome of tenders and direct placements has to be seen in the context of a wider demand for transparency and a right of access to information, not only for the Staff Representation but also for the Staff that we represent. At a higher political level the right to make proposals, e.g. to the General Advisory Committee (GAC), and the right to participate. or at least be present as an observer, in important bodies like the MAC and the Board 28 should be discussed. And last but not least, we would expect from the administration *reasoned* decisions on all issues concerning staff rather than a mere decision, accompanied by some hand-waving in the direction of a reasoning. This brings us back to the very purpose of staff representation: to improve the quality of the management decision-making process, to the benefit of the Office and its Staff.

Conclusions

The Staff Committee fears that the present invitation of the President to talk about "social partnership" may be at least partially motivated by a desire to curb the influence of the Staff Representation as a whole, rather than by a desire for a truly functioning partnership. We furthermore note that real social partnership is difficult, if not impossible, to achieve solely through the establishment of a legal framework: it requires a willingness to listen to, and a respect for, the opinions of the staff and their representatives.

The Staff Committee nevertheless welcomes any attempt to address the lacunae identified above. We will therefore enter into these talks with a positive frame of mind, but also with a clear set of expectations.

The Central Staff Committee