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Legal Assistance

OHRM, UN Secretariat

Introduction

1. The Applicant, a National Officer at the United Nations Assistance Mission in Iraq (UNAMI), contests the amount of the salary increases awarded to staff members of the United Nations common system serving in Iraq, including UNAMI. The new salary scales were decided by the Office of Human Resources Management (OHRM) in December 2010.

2. This increase followed an interim salary survey conducted by the Local Salary Survey Committee (LSSC).

The Issue

3. Most of the grounds for contesting the administrative decision in the Application relate to the use of the data collected by the LSSC in the 2010 survey. However, the Applicant also refers to “[t]he flawed methodology of the 2008 comprehensive survey” and “[t]he failure of the 2008 survey, compounded by the 2010 survey to adhere to the Flemming Principles.”

4. Article 8.1 of the Statute of the United Nations Dispute Tribunal (“the Tribunal”) states in part that “[a]n application shall be receivable if...an applicant has previously submitted the contested administrative decision for management evaluation, where required.” The Tribunal notes that the Applicant’s request for management evaluation made on 18 February 2011 related to the results of the interim salary survey of 2010 and that there was no timely request for administrative review of the 2008 survey. In the absence of a request for management evaluation, any substantive contest

Procedural History

6. In Case Management Order No. 054 (NBI/2012) the Judge to whom this case was initially assigned decided that the Tribunal would determine the matter on the pleadings filed by the parties. Both parties filed sworn witness statements and closing submissions. The case was then assigned to the undersigned Judge for determination on the papers.

Facts

7. The following facts are taken from the pleadings, including annexes, and the sworn witness statements filed by both parties.

8. The Applicant is a legal officer at UNAMI. In 2010, she was elected one of three members of the National Staff Union (NSU) in Baghdad and was appointed chair.

9.

18. The LSSC and the National Staff Representatives (NSR)¹ in Iraq sent a memorandum dated 26 January 2011 addressed to the Chief of Compensation and Classification Section of OHRM in which they recorded their objections to these results, sought answers on particular queries and raised additional concerns. It stated: “adopting the final results of the Interim Salary Survey in the above mentioned form is unfair and need additional review for all the above related facts.”

19. By memorandum dated 9 February 2011, the Chief of Compensation and Classification Section of OHRM responded to the concerns raised by the LSSC and the NSR:

We have re-checked the processing of the data for the 2010 Interim Survey, particularly with regard to the data collected from the US Embassy. In processing the data we have compared the actual salary data effective 23 June 2010, job by job, against the salary data that was used in the establishing the June 2008 salary scale. In doing so,

21. On 17 February 2011, OHRM advised the LSSC that it had requested clarification from the US State Department on the concerns raised about its salary data.

22. On 18 February 2011, the Compensation Officer in OHRM replied to NSU and the LSSC setting out the reasons for its decision. In that email, she disputed the certified information supplied by LSSC and referred to enquiries she had made including a web search to confirm the correctness of the OHRM calculation. According to her information, the US Embassy's second salary increase of 11% did not take effect until October 2010. OHRM was not in a position to use the October 2010 US Embassy salary rates in the interim survey analysis, because those rates were set after the salary review period.

23. On 28 February 2011, OHRM responded to the LSSC by conveying the clarification received from the US State Department. This comprised the Local Compensation Plan Salary schedule effective 6 July 2008 and the maximum authorised pay increase from Human Resource and United Nations Interim Salary Survey tabling the current salaries and benefits changes since June 2010.

24. The Applicant's witnesses gave some background to this dispute.

25. Mohammed Turkey was an LSSC member who participated in the salary survey in 2010. His sworn statement to the Tribunal was supported by a statement by another LSSC member, Hasam Akobi.

26. Mr. Turkey explained that most of the members of the LSSC had not received training due to a lack of budget and that the LSSC did not receive support from the salary specialist who could not come to the duty station to give training because of security issues. Instead Mr. Akobi went to Jordan for training. He said that although the LSSC wanted to consider other better comparator employers in the 2010 survey it was limited to updating the data from the two surveyed in 2008, the US Embassy and the ICRC. Thus the reference point for the 2010 survey was June 2008 survey. The LSSC was assembled in July 2010 and began its work then.

27. He believes that the OHRM response to the data and explanations supplied by the ISSC was based on a misunderstanding. This resulted in OHRM considering the wrong table in the calculation method. In his view, the OHRM response is non-compliant with the

methodology or the rules.

28. The Respondent submitted sworn statements from Cecelia Seaforth and Arnab Roy.

29. Ms Seaforth is a Human Resources Officer (HRO), Compensation and Classification Section in the Human Resources Policy Services (HRPS) in OHRM. She said that a family expenditure survey could not be undertaken or considered as a special measure as there were international and multinational companies in operation in the locality.

30. She also said that none of the criteria to establish a local practice of paying a spousal allowance was met.

31. Arnab Roy, the Chief Compensation and Classification Section in OHRM, stated in his witness statement that “ extreme conditions may develop where it is necessary to apply exceptional measures in the maintenance of local salaries...the application of special measures does not imply the suspension of the normal Methodology...they take place [as a] parallel and supplemental process.” He further stated that conditions that necessitate special measures are two-fold: acute economic distress and/or long-term economic/social instability.

Submissions

32. Given their technical nature, the specific submissions of the Applicant and Respondent in relation to each of the issues will be canvassed in the considerations. In summary the overall submissions of the parties are as follows.

Applicant’s submissions

33. An LSSC has sole responsibility for fact-finding and makes policy recommendations.

alternate method of determining salaries by using family expenditure surveys on the cost of living.

35. The 2010 survey updated the 2008 data and generated the same concerns by the LSSC

Staff regulation 3.1 states:

Salaries of staff members shall be fixed by the Secretary-General in accordance with the provisions of annex I to the present Regulations.

45. Paragraph 6 of Annex I of the Staff Regulations states:

The Secretary-General shall fix the salary scales for staff members in the General Service and related categories, normally on the basis of the best prevailing conditions of employment in the locality of the United Nations Officer concerned ...

46. The General Assembly established the ICSC in its resolution 3042 (XXVII) of 19 December 1972 and approved its Statute by its resolution of 18 December 1974.

47.

states that LSSC “strives to recommend the optimal recommended salary scale.” In the end, the LSSC “reviews the survey findings and submits its conclusions and recommendations to Headquarters [of the designated agency] in a report.”

The Methodology

55. The guiding principles for the methodology to be used in salary surveys are contained in document ICSC/57/R.15. Paragraph 10 authorises the use of the Manual for guidance on the application of the methodology. It states:

The Methodology as adopted by the Commission and contained in the present document is authoritative and prevails in the event of any discrepancy between the operational

Headquarters. Para 6.7 of the Manual states that at this point, the designated agency and responsible agency are involved in the review and approval of the salary survey results. The approval of the salary scale and other allowances marks the conclusion of the review. As per para 98 of the ICSC/57/R.15, the designated agency reviews the survey results and the appropriate decision on the levels of salaries and allowances to be established is made by the responsible agency.

72.

Family expenditure surveys

81. During the conduct of the 2010 interim survey, the LSSC requested that a family expenditure survey be undertaken as a special measure in lieu of a survey of comparator employers.

The Guidelines

82. Section 0.19 of the Manual notes that flexibility is built into the methodology to address the wide range of labour market conditions found around the world. In extreme circumstances it may be necessary to go beyond the approach found in the methodology and these are detailed in special measures. These apply in volatile economic and or social conditions.

83. In extreme conditions where comparator employers may have closed, one of the methods available to the LSSC to assess local market conditions is a family expenditure survey designed to construct a simple mechanism for measuring local cost of living.

84. In the Special Measure provisions in part III of the Manual, paragraphs 8.23 to 8.32 deals with the family expenditure survey in response to civil unrest and the breakdown of the labour market. This type of survey is envisioned to take place in circumstances of warfare where the labour market activity ceases and where staff is in difficult and hostile conditions. In these instances, as reflected in para 8.23 of the Manual, “special measures aim to provide relative stability in salaries through extremely volatile social and economic conditions.” In these cases, the first step of the LSSC is to report on the situation of comparator employees. Where comparator organizations have closed and therefore rendering the collection of accurate statistics difficult, the LSSC constructs a simple mechanism for measuring local cost of living: the local Family Expenditure Survey (FES).

85. Paragraph 8.30 of the Manual states that a special measure option is used “extremely rarely and only after the complete collapse of the labour market.” Para 8.32 further states that “conditions where special measures are warranted...the LSSC must contact the Headquarters of the designated agency for guidance concerning the approach to be taken in each specific situation that arises.”

86. The Applicant contends that a family expenditure should have been conducted in

order to establish “a base-line comparator” as an alternative approach to a salary survey. She refers to three indicia in the Manual that can be used to determine if there has been a sufficient collapse in the labour market to warrant a family expenditure survey.

87. First, the Manual contemplates a minimum of five comparator employers. However the Applicant pointed out that in the case of Iraq there were only two comparator employers who could be surveyed because of economic and social conditions. It is unlikely data obtained from just two employers can accurately be called a survey.

88. Second, the comparators who were surveyed did not meet particular characteristics such as representing a broad cross-section of competitive economic sectors, the two employers lacked continuity and all the employers should be located within commuting distance of the duty station. The Applicant pointed out that paragraph 27(b) of the Methodology states that no exception shall be made to this last requirement and the ICRC was 400 kilometres away from Baghdad.

89. Third, choosing only two comparators, the US Embassy and the ICRC, because no others could provide sufficient data, represents the fact that war had broken out and there were extremely volatile social and economic conditions.

90. In reply, the Respondent submitted that the Manual does not create an entitlement to adjust salary scales based on an FES, but rather creates an option for such a survey to be used at the discretion of the agency in extremely rare circumstances and “only after the complete collapse of the labour market.” As OHRM was able to survey the two employers, the ICRC and the US Embassy, which were used to establish the Iraqi salary scale in 2008 then the labour market was not considered to be a “complete collapse.” For this reason the FES was not justified in this case.

Conclusion

91. While it is undeniable that in 2010 Iraq was at the very least, suffering from challenging social and economic conditions, the Manual sets a very high threshold for the special measure of conducting a family expenditure survey. This is demonstrated in the use of words such as ‘extremely rare’ and “complete collapse of the labour market.

92. While it was for the LSSC to recommend an FES on the basis of the conditions it

observed and information it gathered on the ground, ultimately it was for OHRM to exercise its discretion to make the final decision. It cannot be said that the decision to exclude a family expenditure survey was unfair or was tainted by extraneous factors. Although, exceptionally, there were only two comparator employers these were stable organisations that continued to function in Iraq. The special measures section of the Manual contemplates a situation where the collection of accurate statistics is compromised because comparator organisations have closed.

93. In the present case the comparator employers remained operational and were able to provide detailed data sufficient to base a decision on. The methodology is expressly stated to be flexible to take account of different labour markets. In this case OHRM decided that the conditions were not extreme enough to warrant a family expenditure survey because data could otherwise be obtained.

94. The Tribunal concludes that the Administration did not breach any of the provisions of the Manual when it reached that decision.

Spousal allowance

95. These are provided for in Chapter 5 of the Manual as one of several allowances that may be established for General Service staff. It is created where supported by local practice. There is no guaranteed minimum or floor amount established by the United Nations for a dependent spouse allowance. The LSSC determines what amount, if any, is paid for a dependent under local legislation.

The Guidelines

local legislation, and /or created by direct payment of comparator employers

98. The Applicant acknowledges that the spousal benefit was not made directly by the comparator employers but alleges that OHRM did not take into account local practice common to employees of the state and public sector on spousal allowances and misapprehended the issue. The failure of the 2010 survey to award a spousal allowance is therefore “not in keeping with common employment practice.”

99. The Respondent submits that the requirement of payment of a spousal allowance in Iraq is applicable to some, but not all employers. Furthermore, there is no tax abatement. Neither of the comparator employers surveyed had established a spouse allowance. As the requirements to establish a spouse allowance had not been met, OHRM determined that the payment of a spousal allowance was inappropriate within the context of Iraq.

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Findings

104. The Tribunal finds that the reference month of data collection for the 2010 mini survey conducted by the LSSC in Iraq was the month of June 2010. The base line for the review was the data collected in June 2008.

105. The Tribunal finds that the 11% increase in the US Embassy salaries from June 2008 were properly factored into the calculations, but the 2010 increase falls outside the date range for the collection and consideration of data for the 2010 review.

106. There is no evidence of ill motivation or breaches of the relevant rules and guidelines by the Administration.

107. The Administration did not breach any of the provisions of the Manual when it reached that decision concerning family expenditure surveys.

108. OHRM used the correct criteria for deciding if a spousal allowance should be created. There are no grounds to justify the interference of the Tribunal in the exercise of that discretion.

Conclusion

109. In view of the foregoing, the Application is dismissed in its entirety.

(Signed)

Judge Coral Shaw

Dated this 3rd day of July 2013

Entered in the Register on this 3rd day of July 2013

(Signed)