

## Foreign Service Grievance Board

May 18, 1972

TO: The Director of Personnel,  
Department of State

SLJLCT: Record of Proceedings Number 71-14-State-Dil:  
Remedial Order in the Case of Grievant, FSO-5.

RE?: 3 FAM 667.2

[Grievant], FSO-5, filed a formal grievance with the Grievance Board on November 22, 1971, in connection with his projected involuntary retirement from the service because of two consecutive low rankings. [Grievant] contended that these Eternised froir an efficiency report covering the period June 15, 1967 to June 15, 1S68, which (1) did not adequately account for significant work done during the reporting period, arid (2) contained a number of remarks which were untrue and unfairly prejudicial.

The Board investigated his case and on the basis of its preliminary findings ordered a full Board hearings to be held. At a pre-hearing conference on March 17, at which Mr. Don Kienzle in his capacity as [grievant's] representative was also present, the grievant notified the Board that he would call two witnesses: redacted, the officer who rated him in the efficiency report in question, and redacted, who was the reviewing officer. At this pre-hearing conference, [grievant] confirmed that his grievance remained as presented by him in his letter to the Board of Hoverober 22, 1971.

At the hearing on March 21, reviewer was unable to be present since he was out of the country on official business. The Board therefore, after hearing as much of the case as was possible without him, scheduled a second, sitting or. May 9. Transcripts of both of these meetings have bean made available to the grievant and are a part of the record of proceedings in this case.

The grievant's claim that his two low-rankings were heavily influenced by the 1968 report was found by the Board to be

substantiated. Quotations, both direct and indirect, from that report predominate in the statements given by the Selection Boards for their reasons for low-ranking the grievant. The question therefore of whether the report was "unfairly prejudicial" is the central issue in fchLs Grievance.

The testimony of rater established the fact that he had never before written an efficiency report on a foreign service officer at the time he prepared the report in question, that he was over-strict in his evaluation of [grievant], that he did not intend the report to harm [grievant's] chances for advancement in the service but that he recognizes now that the report has undoubtedly done so, and that he would never again, write e report in the way that he wrote that particular one.

Reviewer, in his testimony, confirmed that rater was unusually strict in his ratings, and acknowledged that a number of his own remarks about [grievant], in the reviewing section of the report, could be subject to misinterpretation since he meant them to apply to [grievant's] next assignment whereas they ight have been assumed to be directed at his performance during the reporting period. Both rater and reviewer expressed a willingness to edit or rewrite their remarks so as to conform to their true intentions in. evaluating [grievant's] performance during the reporting period.

The Department's representative acknowledged that the report as i~ ands is prejudicial to [grievant] although he questioned : her it is unfair or false. In considering this point f Board noted that in addition to an unusually strict rating standard, the vivid, somewhat isetaphoric, language used in a number of phrases in the report had an negative effect upon the Selection Boards which was quite unintended by its authors. In this as well as in the fact that it did not conform to prevalent rating standards the report was misleading in a way damaging to the grievant's career.

The Board also noted that two considerable gaps in coverage of the grievant's performance record have occurred: one in 1963 when a performance report was lost in. the Departmet and one in the 1968 report. Although the Department acknowledge the injust. to [grievant] in the loss of the 3.963 report an« did insert into his performance folder coverage of his work

in the Kews Division during five months of 1963, this was done only in January 1972 and this favorable report was not in his folder at the time he was considered by the 1969 and 1970 Selection Boards. The **record is also** clear that the first five months of the 1968 rating period were inadequately dealt with in that report. The earlier months of the period, from June 15, to August 1967 were entirely missing in the coverage while the period from August to early November was touched on only briefly. Through the action of the Grievance Board a statement giving fuller documentation of an important Social Security Survey carried out by [grievant] during this period was obtained from redacted who was [grievant's] supervisor during this Survey. Had an interim report on the first three months been submitted, there is no reason to doubt that it would have continued to be in the highly favorable vein of the preceding year's report and had the statements in redacted letter also been included in the year's report the Selection Boards would have had a much more complete basis on which to make its evaluation.

In short, the Board notes that the Selection Boards which low-ranked [grievant] did so on the basis of incomplete information about his accomplishments as well as on the basis of one report which must be judged to be unfairly prejudicial in the light of the circumstances above described. The Board is convinced that because of this the Selection Boards were not in a position to compare the grievant fairly with his peers.

The Board further notes that the summary statement prepared for the Final Review Panel's action after the two low-rankings is itself unfairly prejudicial in tone as well as misleading and inaccurate in some of its statements, further compounding the injustice already suffered by the grievant by reason of incomplete performance coverage and a report judged by the Board to be unfairly prejudicial.

For example, the sentence "Throughout his recent career- [grievant's] performance has ranged from adequate to poor"<sup>5</sup> completely ignores the most "recent" part of his career at that time. The report covering his second year in SE cannot accurately be described in the words "adequate" or "poor"<sup>1</sup>, it was an excellent report with a recommendation for promotion which was strongly concurred in by the reviewing officer. I''

The Board therefore orders that the 1968 report. Parts I and XI, including rating and reviewing **statements**, be **reached from [grievant's performance folder\* that the low ranking\*]** the 1969 and 1970 Boards be expunged; that all references to his low rankings, selection out, or his leaving the service be removed from his CDC file; that the portion of the last sentence of the August 13, 1971 report by redacted beginning "and in view of his plans to leave the Foreign Service..." be excised.

The Board further orders that the grievant be non-rated for the current year's Selection Board.

The Board suggests that [grievant] be given assignments that will give future Selection Boards reasonable basis for a fair assessment of his capabilities and that this be done in consultation with him.

The following statement should be placed in the grievant's file in lieu of the 1968 report:

The efficiency report for the period June 15, 1967 to June 15, 1968 has been removed in its entirety by order of the Foreign Service Interim Grievance Board which found it to be unfairly prejudicial to the officer.

William E. Simkin Chairman,  
Foreign Service Grievance Board

cc: Grievant  
Mr. Kienzle