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Foreign Service Grievance Board

July 29, 1974

TO: Director of Personnel
Department of State

SUBJECT* Record of Proceedings 73-157-STATE-94
Heir.edial Order in the Case of Grievant, FSO-6

I *On* January 26, 1974 FEO-6 grievant filed a formal grievance r with this Board requesting the deletion from his Performance File I of; *1)* two paragraphs *Bt* the Reviewing officer's Statement of I the Officer Evaluation Report (OBR) for the period June 16, 1972 I to November'30, 1972; and *2}* an Officer Evaluation *Memorandum* for the period December 1> 1972 to January 19, 1973. Be objects to the cited portions of both 1) and 2) above censuring him for his actions in connection with his departure from Erabassy/redacted.

After a brief opening paragraph agreeing with the Rating Officer's favorable evaluation of grievant's work performance, the Reviewing Officer, who was the Deputy Chief of Mission, wrote in the first OER {June-Noveisber 1972);

> "I regret I cannot comment in such a positive vein regarding grievant's attitude toward the Service, and I Allude to this aspect of grievant. As the Rating Offi cer states, upon his departure the two top positions in the Economic Section were vacant, with no prospect of their being filJU-d for at least four or five months. Given this crit' JL! situation, grievant was asiced to extend his tour -->r three months, through March. He at first agref- o help out by extending, but later stated that he could not and would not stay beyond the end of his two year tour of duty, which would be completed the beginning of January. Although there are apparently health problems in his family concerning which we were prepared to be sympathetic and helpful, grievant's attitude during this time was one of adamant insistence that under no circumstances would he remain when his tour of duty was up. Eventually it was necessary for the Ambassador to intervene personally in the matter, and it was only after his intervention that grievant agreed to the compromise extension through February mentioned by the Rating Officer.

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"It is regrettable that grievant chose to tarnish an otherwise commendable record at his first post by acting in the manner herein described."

In the second GBR (December 1972 - January 1973} another Rating Officer provided a store detailed version of the event* leading to grievant's departure from redacted. This statement essentially agreed with the DCM's review quoted above. The Reviewing Officer, again the DCM, supported the Rating Officer's account of Garner's
pre-departure actions.
Grievant requests that the above-quoted portion of the first OER, as well as the entire second OER be expunged from Iiis File.

After having been informed that the'Threshold Review Board had not recommended him for promotion, grievant, on April 3, 1974, amended his grievance to request a promotion to FSO-5 on the ground that the Threshold Board failed to recommend his promotion because it had seen the contested material in his File. Additionally, he seeks: a) "a monetary award for personal, professional and other damages I have incurred resulting from negligence in the preparation and submission of" the evaluation reports to which he had objected; b) "a monetary award for personal , professional and other damages resulting from a failure and/or refusal of the rating and reviewing officers of those reports to comply with Departmental regulations and FAMC 610 in the preparation and submission of these reports;" and c) "a monetary award for personal, professional and other damages I have incurred as a result of the unauthorized alteration by the Performance Evaluation Division of the performance evaluation report covering the period 12/1/72 - 1/19/73."

Background

Grievant entered the Foreign Service in June 1969 as an FSO-7 and was assigned to redacted on December 7, 1970 on a rotational basisi Until April 1971 he served as a Consular Officer after which time he was detailed to the Economic/Coinraercial Section where he remained until his departure from the Pest on January 19, 1973. He received a promotion to FSO-6 in May 1972.

With a master's degree in economics and extensive work on a PhD in developmental economics. grievant's work at redacted was respected and wall above average. He discharged a variety of economic reporting and analysis chores and served most of his time as the Acting Commercial Officer. His superiors all agreed that he exhibited a desire to learn, intellectual capacity, ambition and initiative. Since February 12, 1973 he has been assigned to the Department's Office of Maritime Affairs.

Investigation

Interviews were held with the Rating and Reviewing Officers of the 6/16/72 - 11/30/72 OER, the first OER,- the Reviewing Officer j of the second or interim OER, 12/1/72 - 1/19/73; the fara&sr Chief of the Performance Evaluation Division and his deputy; and Mgrievant's present Career Counselor. Pertinent Departmental regulations and the Garner Performance, Administrative and Career Counseling Files were also examined.

First PER, June 16, 1972 - November 30, 1972

A Departmental regulation requires that an OER be prepared for service of more than 90 days from the date of the last previous report and the departure of either the rated or rating officer. This one was done because of the mid-tour transfer of the Rating Officer, then Chief of the Economic Section, to a position In the Department. Before leaving redacted on November 30th, the Rating Officer prepared an OER in memorandum form and left it with the *DCH* for his review. grievant, at that time, had not seen it. Starting with January 5th, both the Administrative Of f icer^ and grievant repeatedly had asked the DCM to write his review of it. He failed to do so until ten days after grievant's departure.

Some time after his return to Washington, grievant received the memo OER and reminded the Rating Officer of his request, anade In Lima, that he prepare a full report for the period ending JJovea- ber 30th. The Rat ing Officir then did write such a report sent It to redacted for the CM s review. ^

The DCM refused to review the GER as written by the rater, unless ! the latter would agree to change at least one portion of it the for to ■ ' owing: "grievant has agreed to extend his tour In througr Lima I February 1973, provided that his father's health oes not require him to depart earlier," After the Rating Officer agreed to make this change and sent the OER back to redacted, f the DCM then Included the identical reviewing statement he had | written for the.superseded OER in memo form. That statement is [quoted earlier In this document.

Second OER, December 1, 1972 - January 19, 1973

This OER covering a six-week period was prepared by the then Acting Chief of the Economic Section and bears the date of Febru- ary 13th. It was logged into the Department almost four months later, on May 3, 1973. Departmental regulations do not require an Interim OER for periods of less than three months, but grievant specifically requested that one be prepared In this Instance. The ostensible reason for this request was that similar reports had been done on two other junior officers but to him. Initially denied

is granted on these grounds.

Contrarily, when it comes to grievant's request for the promotion denied him by the Threshold Board, our belief has already been indicated by our coiament with respect to the thrust of the OSR's: that grievant's conduct in connection with his departure from redacted left much to be desired. The Board is unable to uphold the grievant's request for a recommendation for promotion.

There remains the matter of grievant's monetary requests. Aside from the fact that there is nothing in the Foreign Service Act or Departmental regulations which would authorise the requested payments, we are not persuaded that grievant is making well-founded claims. As a reflection of our reaction to the claims, we ecaa-ment on grievant's assertion concerning "the unauthorized alteration by the Performance Evaluation Division of *th&* performance evaluation report covering the period 12/1/72 - 1/19/73,* The alteration referred to here consists of a diagonal line ^@Bfim in Ink across the face sheet of the form. The Deoutv *■_« *■><■>

This *GER*, aside from adding some details to grievant's work performance, contains an elaboration of statements he Objected to with respect to the previous OER. It was prepared arter tne controversy over grievant's pre-departure actions had developed.

Findings of the Board

Broadly speaking, the Board has come to two conclusions. Tile first is that grievant's request for the excision of the contested Eiaterial should be upheld. The second is that grievant's request for a retroactive promotion and monetary awards should

KB to the first conclusion, the Board finds it iinnec«SBary to deal specifically with grievant's various contentions going to his claim that the OER's contain inaccurate and falsely prejudicial material. Whether or not grievant is to be overruled on, these contentions —■ and it is plainly true that, in terms of their thrust, the OES's were not inaccurate — the fact is that the OER's are procedurally defective and that this, in the Board's opinion, is determinative of the question of whether or not the contested material should be expunged from grievant's file. The evidence ia clear that: 1} it was a violation of 3 FAM 542 and 529 (b) to have failed to show the ratings to grievant before he left the post? and 2) there was a violation of FAMC €10, Section 6 (b), requiring that rating officers prepare OER*s independently and without collaboration by reviewing officers. grievant's request for the excision of the contested material is granted on these grounds,
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k such a line through another face sheet on her desknrhieh ya» destined for destruction. Mistakenly, she had drawa. th^ i^ through grievant's form instead. She decided against yg to erase it, since she knew that it would have no *ignl£icKic« before the Threshold Board in any case. The Grievance Board eon- aiders this to be a straightforard explanatifjefe^f a hxaoan iwor I which had no effect In this case.

The Board*a Orders

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with respect to the cladfe set forth in regard to the two OER.*», the Foreign Service Grievance Board orders that!

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1) The tteparte»nt delete from grievant's Perfor- ance I"ile the last two paragraphs of the Reviewing Officer's Statement of the OES covering the period from June 16 to November 30, 1972, and include, to explain their absence, th& following etateEientt

"The final two paragraphs of this Reviewing - Officer's Statement have been deleted by order of the Foreign Service Grievance Board because of procedural errors.

"July 29, 1974.

2) The Department remove the interim Evaluation Report covering the period from December 1, 1972 to Janaairy 19, 1973 from grievant's Performance File. Xn lieu thereof the following statement will be enteredi

"An interim Evaluation Report covering the period from December 1, 1972 to January 19, 1973 has been ordered deleted from the Performance File of grievant by the Foreign Service Grievance Board because of its procedural errors.

-July 29, 1974."

The Grievance Board requests the Department's confirmation of compliance with the above Orders within 30 days of their receipt.

William E. Sisokln
Chairman
Foreign Service Grievance Board

cc:
Grievant and
AFSA