

## Foreign Service Grievance Board

March 7, 1975

MEMORANDUM

Findings of the Board in the Case of

██████████,  
Record of Proceedings 74-245-AID-88

On December 24, 1974, the Agency for International Development (AID) forwarded ██████████ grievance following completion of the informal grievance procedures. The Board accepted jurisdiction on January 2, 1975 and ordered an appropriate investigation. The investigation consisted of a review of the Record of Proceedings, the applicable regulations and the grievant's official personnel file. There were also discussions with officials of AID and the American Foreign Service Association (AFSA) which represents the grievant.

Grievance

██████████ grieves he has been illegally assigned an Area Occupational Specialty Code (AOSC) pursuant to AID'S issuance of Manual Circular 476.2 issued on June 12, 1974, titled Reduction-in-Force - AID Foreign Service Personnel. His title and code were changed, from contract Specialist 1102.05 to Assistant Contract Service Officer 1102.02. Mr. Sutton charges that the regulation under which the new AOSC was issued is defective in that it was issued without consultation with AFSA as required under Executive Order 11636 - Employee Management Relations in the Foreign Service. He states that assignment of the new AOSC result in an inaccuracy in his personnel file since the new AOSC was assigned to him against his will under new regulations which were not legally promulgated. He also states that his personnel file indicates that he is "vulnerable to placement on an improper competitive level for RIF purposes" because of the error in his file.

██████████ has asked as relief that he be allowed to retain his old AOSC pending the outcome of the Unfair Labor Practice case filed by AFSA against AID concerning K.C. 476.2.

In its final informal review of this grievance, AID contended that "The AOSC assigned to you for RIF purposes is therefore in accordance with published Agency regulations (AID Manual Circular 476.2) and is based upon the duties and responsibilities of the occupied position..."

-Background on the AOSC

Under the controlling AID regulations. Manual Circular 476, each Foreign Service employee is assigned a numerical AOSC identifying his occupational category, or competitive group. On the basis of these AOSCs, the retention registers required in the event of a RIF would be updated. These registers, in turn, would determine when or if an employee would be separated.

In 1968 AID modified subparagraph "G" of MC 476.2 to provide that those Foreign Service employees in Washington and [REDACTED] would be assigned AOSCs based "...upon an analysis of the employee's current duties as they relate to Foreign Service occupations, his last overseas position, and previous experience and training..." following "consultation" with the employee. All other employees were assigned the AOSC belonging to the position they occupied.

On June 12, 1974, AID amended MC 476.2.G to remove the special procedures governing the assignment of AOSCs to employees assigned to Washington and Viet-Kauai. After that date, all employees were to take the AOSC of the position they held; or, in the case of those employees who occupied no position and were "on the complement\*\*", the AOSC of the position they last occupied either in Washington or in the field. AID justified this change in the regulations on its determination that the 1968 regulation was in conflict with the CSC's regulations on RIF procedures, by which the Agency was bound.

AFSA, which represents the grievant and all AID Foreign Service personnel, <sup>i</sup>.-> tested these changes in regulation and lodged an unfair prac<sup>t</sup>ice charge against AID under E.O. 11636. AFSA charged that AID was <sup>o</sup>und to consult with it before issuing the June 12 regulation <sup>m</sup>ge. This charge is now under active consideration by the Empi.<sup>e</sup> ee Management Relations Commission (EMEC) in accordance with the governing regulations. ■

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AFSA also supports the grievant<sup>f</sup>'s complaint that, in issuing the regulation change without consulting with it, AID further violated the individual employee's rights under the E.O. by denying them the protection of that consultation.

Issues and Findings

The Board took jurisdiction over this grievance on the basis of th<sup>\*</sup> claim that there was an error in the official personnel file, the new AOSC. The sole basis upon which the grievant has challenged the accuracy of the new AOSC is that it was issued under

a regulation promulgated without consultation with AFSA. It is charged that/ on that basis, the regulation is invalid and the new AOSC issued under its provisions is incorrect. It is on that basis that the grievant asks, as relief, restoration of his former AOEC until such time as AID and AFSA shall agree upon a new regulation to replace the allegedly defective one. The Board notes that there is no charge or evidence that the new AOSC does not reflect the employee's current duties, that it is invalid under the terms of the June 12 regulations change, or that the regulation was not published, under the usual procedures for the issuance of regulations.

Paragraph V.G. of M,C. 476.2, "Reduction in Force - AID Foreign Service" dated June 12 reads in part as follows:

"Occupational Category - The Employee's occupational category is identified by the six-digit occupational code {as listed in the Overseas Position Management Handbook) of the position occupied in Washington or overseas, including [REDACTED]. Washington positions occupied by Foreign Service employees are assigned Foreign Service occupational codes, based upon an analysis of the duties and responsibilities of such positions..."

[REDACTED] previous AOSC was Contract Specialist, 1102.05, a Civil Service title; his new AOSC is Assistant Contract Services Officer, 1102.02, a Foreign Service title which most closely describes his duties. There is, therefore, no basis upon which *tba* Board can conclude the grievant<sup>1</sup>'s new AOSC is incorrect and that he is, therefore, on an incorrect retention register.

#### Violation of Individual Rights

The Board has examined the Executive Order and finds that the rights it expressly confers on the individual employees are to "...freely and without fear of penalty or reprisal, to form, join and assist any organization as defined herein, or to refrain from such activity..." (Section 1.(a.)). Management, pursuant to Section 13 (a) (1) is enjoined to observe these rights. An examination of the regulations (Title 22, Chapter VIII) promulgated to implement the E.o, shows that employees may file individual unfair practice charges under the provisions of #art 803, which reads in part: "A complaint that a foreign affairs agency or an organization has engaged in any act prohibited under Section 13 of the order or has failed to take any action required by the order, may be filed by an employee, a foreign affairs agency, or an organization,"

Under these circumstances, the Board concludes that any general claim that an employee's individual rights under the E.O. have been violated in connection with the AOSC change is effectively inseparable from the unfair practice charge already lodged by AFSA and can be decided only by the EMRC.

Conclusions

The Board finds no basis for a finding that the grievant's new AOSC is incorrect. The question of whether the regulation upon which it is based is invalid and whether his individual rights under E.O. 11636 have been violated by promulgation of that regulation are, by regulation, matters for adjudication by the EMRC alone and are inseparable from AFSA's unfair practice charge now before that body.

Summary

The grievant claims he has been illegally given an Area Occupational Speciality Code (AOSC) under regulations issued without consultation with AFSA, as required by EO 11636, Employee Management Relations in the Foreign Service. He states there is an error in his file due to the illegally promulgated new regulations and the error makes him vulnerable to placement on an improper competitive level for RIF purposes.

To comply with Civil Service Commission regulations on RTF procedure; address AID amended MC 476.2 G on June 12, 1974, resulting in employees taking the AOSC of the position held, or, 3. If an employee's complement, the AOSC of their last job. Foreign Service employees occupying civil service positions in Washington were given Foreign Service occupational codes most closely describing their present duties. The AOSC of [redacted] present civil service position is Contract Specialist, No. 1102.05. AID has assigned him a Foreign Service code: Assistant Contract Services Officer, So. 1102.02.

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The Board finds no basis to believe the new AOSC is incorrect. The validity of the regulation and whether his individual rights have been violated by promulgation of the regulation are matters for adjudication by the EMRC and inseparable from unfair practice charge.

**William E. Eisinger**  
**Chairman**      **Foreign**  
**Service**      **Board**

cc: SER/PM  
AFSA

