EXCISED

Foreign Eui--.i~'. Grievance i:oard -

March 10, 1975

MEMORANDUM

Fiuuings of the Board in the Case [redacted],
Record of Proceedings 74-246-AID-89

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

[redacted]

[redacted] 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 Development Training Specialist 1701.22 to Education Advisor 1710.08. When [redacted] was assigned to Washington in December of 1972 he was informed that for ££IF purposes his AOSC would be 1710.08.

[redacted] charges that the regulation under which the now AOSC was issued is defective in that it was issued without consultation with *RFV* . as required under Executive Order 11636 - Employee Manager--- Relations in the Foreign Service. He states that assigns of the new AOSC results in an inaccuracy in his per- [sonne." ..e since the new AOSC was assigned to hiir. against his j will unu.r 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 [RIP purposes" because of the error in his file.

[redacted] has asked as relief that he beiallowed to retain his old AOSC pending the outcome of the Unfair Practice case filed by AFSA against AID concerning M.C. 476.2.

In its final informal review of this grievance, AID contended •that "The AOSC assigned to you for RIF purpose is therefore in accordance with published Agency regulations and is based upon

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responsibilities of the occupied position..."

Background on the AOSC

Under the controlling AID regulations. Manual Circular 476, escjh 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 RTF 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 the 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 anended MC 476.2.G to remove the special procedures governing the assignments of AOSCs to employees assigned to Washington and [redacted]. 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 RTF procedures, by which -the Agency was bound.

AFSA, which represents the grievant and all AID Foreign Service personnel, protested these changes in regulation and lodged an unfair practice charge against AID under E.O. 11636. AFSA charged that AID was bound to consult with it before issuing the June 12 regulation change. This charge is now under active consideration by the Employee ?4anagement Relations Commission (EMRC) in accordance with the governing regulations.

AFSA also supports the grievant'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 the 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 vas 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, 1974, reads in part** ate **follow*t**

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> "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 Development Training **Specialist, 1701.22 (for** RIF **purposes his** AOSC **was 1710.08, a Civil Service title);** his new AOSC is Education **Advisor, 1710.08, a Foreign Service title which most closely describes his duties. There i«, therefore, no basis upon which- the Board can conclude the griev-** ant'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 exami nation of the regulations (Title 22, Chapter, VIZ) pronmlgatftd to implement the E.O. shows that employees »ay file individual** unfair practice charges under the **provisions of Part 803, which** reads in part:

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> "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[f]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-0. 11636 have been violated by promulgation of the same regulation are, by regulation, laatters for adjudication by the EMRC alone *and* are inseparable from AFSA's unfair practice charge now before the body.

The grievant claims he has been illegally given an Area Occupational Specialty Code (AOSC) under regulations issued without consultation with AFSA, as required by E.o. 11636, Employee Management Relations in the Foreign Service. He states there is an error in his file due to the illegally promulgmtad new regulation* and *z&m* —■—error makes fciia vulnerable to placement on. an i&prop*r competitive level for RXF purposes.

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To comply with Civil Service Comisission regulations *on* RIF prr d-ures, AID amended M.C 476.2 G on June 12, 1974, resulting in employees taking th" AOSC of the position held, or, if on t V complement, the AOEC 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 Development Training Specialist, 1701.22 (for RIF purposes his AOEC is 1710.08). AID has assigned him a *Pox*kX<&i* Service code: Education **Advisor, 1710.08.** ' - '■ - -;r#>^ ;■■-■■-**'*■■«■■■-= ■ ■

The Board finds no basis to believe tfe« ae%r AOSC ,£» incorrect. The validity of the regulation anfi whether his individual

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rights have been violated fcy promulgation of the regulation are matters for adjudication by the EMRC and inseparable from AFSA's unfair practice charge.

(William E. Simkin
| * Chairman
f ' Foreign Service Grievance Board

cc: SER/PM
AFSA