

Foreign Service Grievance Board

April 15, X975

MEMORANDUM

Findings of the Board in the Case [REDACTED]
[REDACTED] of Proceedings 74-247-AID-90

On December 24, 1974, the Agency for International Development (AID) forwarded [REDACTED] grievance of November 12, 1974, 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*, 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.

[REDACTED] grieves that 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 "Education-in-Force - AID Foreign Service Personnel". He also charges that the regulation under which his 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 further charges that he was not given the opportunity to consult on the assignment of his code, which he believes resulted in his being assigned a code which does not reflect his full range of qualifications, limits his assignment possibilities and subjected him to the RIF.

[REDACTED] states that the assignment of his AOSC 1710.32 results in an inaccuracy in his personnel file since it was assigned to him against his will under new regulations which were not legally promulgated.

[REDACTED] asks as relief that assignment of his AOSC be considered invalid until the outcome of the Unfair Labor Practice case filed by AFSA against AID concerning M.C. 476.2 is known.

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.

I In 1968 AID modified subparagraph "G^H" of MC 476.2 to provide that those Foreign Service employees in Washington and ██████████ 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 amended MC 476.2.G to remove the special procedures governing the assignments of AOSCs to employees assigned to Washington and Viet-Nam. 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, 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 Management 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 assigned AOEC. The basis upon which the grievant challenged the accuracy of his 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 AOSC issued under its provision is incorrect. It is on that basis that the grievant asks, as relief, suspension of assignment of an AOSC until such time as AID and AFSA shall agree upon a new regulation to replace the allegedly defective one. ██████████ claims his AOSC restricts his assignments only to « narrow specialty related to his work in ██████████ and does not permit him to be considered for other work for which he is qualified.

The Board notes that there is no charge or evidence that his j AOSC did not reflect the employee's duties, that it is invalid j under the terms of the June 12 regulations char-^p, or that the I regulation was not published under the usual procedures for the I issuance of regulations.

Paragraph V.G. of M.C. 476.2, "Reduction in Force - AID Foreign Service**", dated June 12, 1974, reads in part as follows:

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

! Before being assigned to Washington in July 1974, [REDACTED] had
| an AOSC 1710,32 Education Advisor (Teacher Training), Upon being
assigned to Washington he was given the same AOSC and title and
was on the complement. His SF 50 dated July 10, 1974 stated that in
the event of a RIF Mr. Howe's AOSC would be 1710.32, Education Advisor
(Teacher Training). The Board finds no basis upon which
i it can conclude the grievant*s AOSC is incorrect or invalid, or that
he was on an incorrect retention register.

Violation of Individual Rights

! ■ The Board has examined the Executive order and finds that the i
rights it expressly confers on the i: vidual employees are to I
"...freely and without fear of penalt or reprisal, to form,
join and assist any organization as :ined 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 VII) promulgated to implement the
E.O. shows that employees may file with the BMRC individual unfair
practice charges under the provisions of Part 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."

The Board concludes that [REDACTED] claim is inseparable from the unfair practice charge already lodged by AFSA with the EMRC and is properly detenrtinable by that body.

Conclusions

The Board has no basis for a finding that the grievant's AOSC is incorrect or invalid. 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 matters for adjudication by the EMRC alone and are inseparable from AFSA's unfair practice charge by that body.

Summary

The grievant claims he has been illegally given an Area Occupational Specialty Code (AOSC) tinder regulations issued without consultation with AFSA, as required by E.O. 11636, Ssployee-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. He claims his AOSC in Saigon, Education Advisor (Teacher Training), did not reflect the wide range of worJc for which he was qualified.

To comply with Civil Service Commission regulations on RIF procedures, AID amended M.C. 476.2 G on June 12, 1974, resulting in employees taking the AOEC of their last permanent \$oh.~ Foreign Service employees occupying civil service positions in Washington were given Foreign Servi [REDACTED] e occupational code's most closely describing their present duies. The AOSC of [REDACTED] position after his transfer tc A: 'Washington, on the complement, was the same as his AOSC in szi-- i.

The Board has no proper basis for concluding that the AOSC is incorrect. The validity of the regulation and Whether his individual rights have been violated by promulgation of the regulations are matters for adjudication before the EMRC and inseparable from AFSA's unfair practice charge.

William E. Simkin
Chairman Foreign
Service Grievance Board

cc: SER/PM