

EXCISION NO. 461

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Grievant

Record of Proceedings  
No-

and

Date: May 30, 1979

[Agency]

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For the Foreign Service Grievance Board:

Presiding Member:

Board Members:

Special Assistant  
to the Board: [

Representatives of Record for the Grievant

Representative of Record for the Agency:

In order to prevent an unwarranted invasion of privacy, names of individuals and other identifying information have been deleted from this material in accordance with Section 552(b)(6) of the Freedom of Information Act. These names and other identifying information are also withholdable under the Privacy Act.

## I. GRIEVANCE

[grievant], a Foreign Service [officer, class], filed a grievance with the Board on [date]. He claims a memorandum evaluating his performance as [specialty] at the U.S. Embassy in [post] during a period in late [year] is procedurally defective and therefore prejudicial. He seeks its removal from his performance file- He also contends that the placing of the disputed evaluation in his file during the pendency of the grievance violates regulations and that disciplinary action against the responsible [Agency] officials is thus warranted.

The [Agency] denies that the disputed memorandum is defective and that regulations were violated when it was placed in his file.

A Record of Proceedings containing relevant documents was compiled under the direction of the Board and closed with the concurrence of the parties. The Board, under authority of Section 906 of its regulations, subsequently met on [date] to consider all aspects of the grievance.

## II. BACKGROUND

The grievant was assigned to the [office] of the U.S. Embassy in [post] on [date] as [chief of section]. He had held [same type] officer positions at other posts for more than a decade. Before that he worked for about 20 years in various clerical positions in U.S. government agencies.

The first Officer Evaluation Report (OER) the grievant received at post covered the period [ ]• During this period he was rated by his supervisor, [name 1]. The report was reviewed by [name], [title]. [name 1] continued as his supervisor for slightly less than three additional months, but was not required to, and did not submit an interim evaluation report for this period, [dates]. From [dates], [name 2] was his immediate supervisor, but he, too, was not required to, and did not prepare a report for this period.

Effective [three month period], [name 3] was assigned as the grievant's supervisor, who, after the close of the period, was asked to prepare a memorandum evaluating grievant\* s performance. That memorandum, the subject of this grievance, was prepared on [date]. From [date] onwards, grievant served as [chief of another section].

### III. DISCUSSION AND FINDINGS

This dispute does not concern the substance or accuracy of the [name 3] evaluation. In a cabled submission to the Board shortly before the closing of the Record, the grievant acknowledged that "although he does not at this time charge that the OER is inaccurate, erroneous, or falsely prejudicial, he contends that the existence of this report, which covers only a short period [and] was influenced by (and describes) the stormy period in question, is sufficiently

prejudicial in itself to justify its withdrawal." The Agency had earlier advised the grievant that "he was free to file a grievance with respect to the specific interim report on ground 'that it is inaccurate or falsely prejudicial or otherwise improper'." However, no such grievance was filed.

The sole question, then, before the Board is whether the alleged technical deficiencies of the memorandum warrant its removal from the grievant's performance file, and whether the Agency's inclusion of the evaluation in her performance file during the pendency of the grievance was improper.

At the outset, the Board notes a dispute as to the actual length of time [name 3] supervised the grievant. There is no dispute, though, that the period was short of 90 days. The grievant directs the Board's attention to the [year] edition of the Agency's Officer Evaluation Report (PER) 0F-266: Instructions for Preparation which

states: "For period of three months or less, no report is required."- Since the period involved was less than three months, grievant says, it was improper for [name 3] to have completed the evaluation. Moreover, while the policy statement clearly provides that evaluations are not required under those circumstances, it clearly does not prohibit them. A reasonable interpretation of the language leads to the conclusion that evaluations are mandatory beyond three months, but discretionary for shorter periods- Accordingly, the Board has concluded on the basis of our findings that there was no procedural impropriety in thus evaluating

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\_1/ By State Telegram 137112, dated May 31, 1978, the Agency announced that effective with the rating period which began April 16, 1978, the minimum period for which performance must be documented is changed from 90 days to 120 days. Form OF-266 must be used. If rating officer chooses to document shorter periods, OF-266 must also be used.

the grievant's performance. The Record also shows that had not the Post opted to document the grievant's performance during the disputed period, there would probably have been no assessment of her work from [approximately 7 month period]. Under such circumstances, it was not unreasonable for the Post to have asked the outgoing supervisor to execute the report-

Finally, the grievant complains that the Agency acted improperly in failing to withhold the disputed memorandum from his performance file during the pendency of the grievance- The Board is not persuaded from its examination of the Record in this case that the Agency was required by pertinent regulations to thus suspend inclusion of the report.

#### IV. DETERMINATION

The Board sees no cause for relief, and the grievance is thus denied.