

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

██████████
Grievant

and

The Agency for
International Development

Record of Proceedings
No. G-91-004-AID-01

Date: April 16, 1991

INTERIM DECISION

EXCISED

For the Foreign Service Grievance Board:

Presiding Member

Howard W. Solomon

Board Members

Paul Modic
Raymond L. Perkins

Special Assistant

Michael J. Gould

Representative for the Grievant:

Self

Representative for the Agency for
International Development:

William Jones
Chief, Labor Relations Staff

Exclusive Representative:

American Foreign Service Association

INTERIM DECISION

In a memorandum to the Board, dated March 28, 1991, grievant [REDACTED] [REDACTED] asked for our assistance under the provisions of section 903.9 of the Board's regulations in obtaining from AID documents he considers crucial to his grievance.

The documents grievant seeks from his agency are:

(1) Copies of all Employee Evaluation Reports (EERs) submitted to AID's Senior Foreign Service selection boards for 1989 and 1990.

(2) A summary of actions taken by the agency's assistant general counsel for employee and public affairs (GC/EPA) in clearing the agency's final decision letter to grievant in this case, dated November 30, 1990, along with any notes, memoranda or other documentation prepared by that office in this case. Grievant specifically asks for GC/EPA's views on the agency's stated position in the decision letter that it did not find any violation of law or regulation in the way EERs were prepared in the office of the Inspector General (OIG).

[REDACTED] maintains that if provided the EERs, he will be able to establish that they contain language used to distinguish officers to be promoted from others competing for promotion into the Senior Foreign Service. He asserts that: (1) the EERs contain exaggerated claims of work accomplishments without mention of any shortcomings; and (2) their content, which was prepared by the officers being rated, is at the heart of his grievance. AID's

refusal to provide him with the EERs because of alleged Privacy Act restrictions is confusing, he says, because the grievance file compiled by the investigators in Personnel contains numerous EERs.

Section 903.9(b)(1) of the Board's regulations provides that this Board may request access to any agency record which a grievant requests to substantiate a grievance if we determine that such records may be relevant and material to the case. On the basis of the Record of Proceedings now before us, we find that grievant has not shown that the EERs he requests are material to his central allegation, that is, that the manner in which the EERs were prepared and considered by the selection boards improperly deprived him of consideration for advancement with a consequent loss of earnings. The selection boards ranked grievant near the promotion cut off line in both 1989 and 1990, so most of the EERs the senior boards considered in those years were for officers rank ordered below grievant and consequently had no effect on his chances for promotion. Therefore, no matter how these EERs were prepared or considered by the boards, they are immaterial to [REDACTED]'s complaint that they caused him harm. Furthermore, he has not shown that, should any of the other EERs be made available to him, he could demonstrate who wrote any particular section, sentence or phrase. Mere allegations that some unspecified EERs were improperly prepared and disadvantaged grievant in his consideration for promotion are

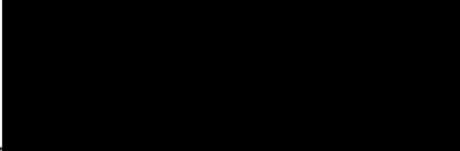
not sufficient to establish that the requested EERs are material to the grievance before us. The Board therefore will not at this time direct the agency to afford grievant access to the EERs provided to the 1989 and 1990 Senior Selection Boards.

Grievant has also requested that we direct the agency to provide him with various notes and documents related to the clearance of the agency's final decision letter by AID's assistant general counsel for employee and public affairs. We shall not do so because we consider any advice GC/EPA may have offered in this regard to be privileged as part of an attorney-client relationship. ✓

For the Foreign Service Grievance Board.



Howard W. Solomon
Presiding Member



Paul Modic
Member



Raymond L. Perkins (PM)
Member