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BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

[redacted]
Grievant

and

The Department of State

Record of Proceedings
No. G-91-032-State-24
No. G-91-049-State-39

October 1, 1991

ORDER

EXCISED

For the Foreign Service Grievance Board:

Presiding Member: Mollie H. Bowers

Board Members: Stanley J. Siegel
Calvin C. Berlin

Special Assistant
to the Board: Michael J. Gould

Representative for the Grievant:

Bridget R. Mugane,
Attorney

Representative for the Department:

Joanne Lishman,
Acting Director, Grievance Staff

Exclusive Representative:

American Foreign Service Association

GRIEVANT'S MOTIONS TO CONSOLIDATE
AND TO SUSPEND ROP CLOSING DATE

1. Grievant [redacted], a tenured Foreign Service officer in the Department of State, is asking this Board, over the objections of the Department, to consolidate three pending grievances into a single grievance. [redacted] has filed the following grievances:

> "[redacted]." -- Filed with the Department, June 12, 1990, amended July 27 and October 23, 1990. Issue: Allegedly erroneous Inspector's Evaluation Report. The Department issued a decision, April 22, 1991, which grievant appealed to this Board on June 11, 1991.
>
> "[redacted]." -- Filed with Department April 15 (originally submitted as an amendment to [redacted] I, but treated by the Department as a separate grievance). Issue: Selection out because of assignment pattern. Amended April 24 (as a new grievance) and May 31, in which he included his [redacted] EER. Department issued its decision on June 7, 1991. Grievant appealed to the Board on August 9, 1991.
>
> "[redacted]" -- The Department's characterization of the [redacted] EER portion of [redacted] The Department issued its decision denying the grievance on June 19, 1991. Grievant also appealed this issue on August 9, 1991, and, at the same time, requested consolidation.

Grievant asks for consolidation because, in his words, "[t]he IER and selection out grievances are intertwined. The PSB cited in its selection-out designation, the issues of both grievances: the IER, the assignment pattern, and the 1989-90 EER." He claims further that "[s]eparate processing will create serious administrative difficulties which will be burdensome and confusing for the Board and the parties. The

remedies will obviously interrelate. Moreover, separate grievances could lead to inconsistent adjudication."

The Department opposes the request on two grounds: (1) that grievant himself filed separate grievances when he could have consolidated them; and (2) that if the three grievances are consolidated and if the grievant should prevail on any point, his attorney could claim fees for time spent on all three grievances. At the same time, it does not oppose the Board's assigning all three grievances to a single panel.

Grievant amended his IER grievance only when the agency notified him that he had been recommended for selection out -- a fact that did not exist when he filed that grievance. While he did at the time acquiesce in the Department's treating I and II as separate grievances, he notes that the Department had already begun writing its first decision when he filed II. But even if those conditions had not existed, we conclude that grievant's filing separate grievances is no bar to our consolidating them now.

On the matter of attorney fees, we recognize that there could be a problem, but our past experience with grievant's attorney leads us to conclude that, if her client prevails, she will segregate her time and charges appropriately.

Most importantly, [redacted] at this point is grieving his proposed separation on grounds of relative performance because of alleged inaccuracy, error or falsely prejudicial character of information in parts of his official personnel file, a

grievance cognizable by the Board under section 1101(a)(1)(A) of the Foreign Service Act of 1980. He contends that the details are contained in the three separate grievances. It certainly is not unusual for the Board to consider a single grievance containing several related issues and even multiple remedies. We find that economy of justice supports a decision to consolidate the three grievances into one.

2. On September 19, grievant asked us to direct the Department to comply with his pending discovery requests and to suspend the closing of the ROP until after discovery is completed. The ROP is now scheduled to close September 23.

The Department has informed the Board that it is in the process of complying with grievant's discovery requests and has no objection to extending the ROP closing.

ORDER

1. The Board hereby consolidates the three grievances into a single grievance which will be identified as ROP G-91-032-STATE-24.

2. The ROP in the consolidated grievance is extended to November 1, 1991.

For the Foreign Service Grievance Board.

[redacted]

Mollie H. Bowers
Presiding Member

[redacted]

Stanley J. Siegel
Member

[redacted]

Calvin C. Berlin
Member