

Decision Chron
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BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

Record of Proceedings
No. G-91-062-State-52

Grievant

Date: December 13, 1991

and

ORDER ON REQUEST
FOR A HEARING

The Department of State

For the Foreign Service Grievance Board:

Presiding Member:

M. David Vaughn

Board Members:

Stanley J. Siegel
John H. Rouse

Special Assistant
to the Board:

Michael J. Gould

Representative for the Grievant:

Self

Representative for the Department:

Joanne M. Lishman
Acting Director,
Grievance Staff

Exclusive Representative:

American Foreign Service Association

ORDER ON REQUEST FOR A HEARING

BACKGROUND

On October 1, 1991 ^{grievant} [REDACTED], a specialist career candidate with the Department of State, appealed to the Board from the September 19 denial of his agency-level grievance. The Department had found no merit in ^{the grievant's} [REDACTED] contentions that the failure of the Specialist Tenuring Board to recommend him for tenure had been improperly based on two erroneous and falsely prejudicial performance evaluation reports (EERs) and had itself been flawed by procedural errors. On appeal grievant asserted that the Department had not made a "fair and adequate effort to research" the accuracy of the statements it relied on and had not considered the judgments of his other supervisors. He also requested prescriptive relief to stay his separation from the Service, but the Board did not then address that request as we were informed that ^{the grievant} [REDACTED] would remain on the Department's rolls until he had completed the career transition program starting in February 1992.

REQUEST FOR A HEARING

On December 2, 1991 grievant requested permission of the Board to make "oral presentation" of his grievance including the testimony of witnesses. He alleged that statements relied on by the Department were "skewed" against him. He asserted that "the most expedient way to set the record straight" would be through a hearing, including past and present supervisors who could "speak about [his] abilities as well as the reputation and habits of" the rating officer whose EERs are in dispute.

The Department responded to the request on December 5. It did not oppose a hearing but questioned whether oral presentation would facilitate resolution of the grievance. The Department expressed concern that "testimonials" of other supervisors would not be germane and observed that his supervisors might not have any specific knowledge relevant to the issues in the grievance. The agency submitted copies of the queries it had sent and the responses it had received during its investigation of the agency-level grievance to demonstrate that it had carefully investigated Congour's allegations.

DISCUSSION AND FINDINGS

Section 1106(1) of the Foreign Service Act of 1980 provides that the Board shall conduct a hearing at the request of a grievant in any case which involves (A) disciplinary action or mandatory retirement for expiration of time-in-class or for relative performance, or "(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument." Since this grievance does not fall within the categories of paragraph (A) of the section, a hearing is warranted only if the Board judges that the grievance can best be resolved by a hearing.

The Board does not believe that a hearing is likely to significantly advance the present grievance. ^{The grievant} [REDACTED] has not indicated with any specificity his basis for disagreeing with the evidence relied on by the Department or what evidence he would introduce to corroborate his contentions. He suggests

only that other supervisors would speak about his abilities and the "reputation and habits" of the rating officer whose EERs he contests. He asserts that oral presentation would be "the most expedient way to set the record straight" because his own schedule is so busy.

The Board is not persuaded that either the efficiency or the substance of the grievance would be advanced by a hearing. Oral presentation of evidence is usually a relatively time-consuming and expensive process. It entails extensive scheduling, preparation of testimony and examination, travel and appearance of witnesses, statements and questioning and cross-questioning before the Board panel, and the preparation and review of the full hearing record. This is not an inherently expeditious process. In the Board's judgment, in those cases where a hearing is discretionary, it is justified only if the personal appearance and examination of parties and witnesses is likely to develop, clarify or resolve the issues better than written submissions could be expected to do.

In the present case, we have been given no reason why written statements by the grievant and the witnesses he wishes to rely upon could not fully address the issues at play. Also, apparently the Department has now shared with  ^{the grievant} all of the evidence it was able to develop. We see no reason ^{the grievant} why any questions concerning that evidence which  might have could not be answered through the submission of written interrogatories to the Department addressed to individual

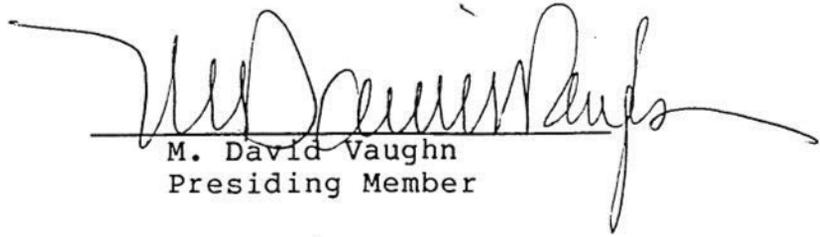
employees, as the Board's rules permit. Such interrogatories should have been submitted within 30 days of the filing of the grievance with the Board, but we have discretion to extend that deadline.

The Board holds that a hearing is not warranted. However, as grievant, who is representing himself, seems not to have been aware that he could obtain evidence through interrogatories, we believe that justice would be served by extending the deadline for their submission in order to provide him a reasonable opportunity to do so.

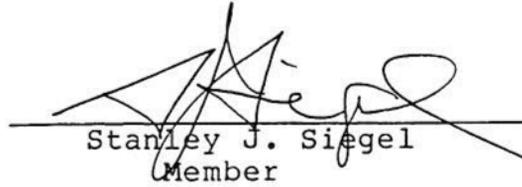
ORDER

1. Grievant's request for oral presentation of the grievance, including witnesses, is denied
2. Grievant is hereby authorized to serve interrogatories on the Department in order to develop additional evidence. Any such interrogatories should be submitted to the Department's grievance office (PER/G) within 30 days of the date of this order.
3. The Department will have 20 days to respond to the interrogatories, following which grievant will have 20 additional days to make any submission to the Board on the merits of the grievance, and the Department, 20 days to respond. The Record of Proceedings will then be closed for decision.

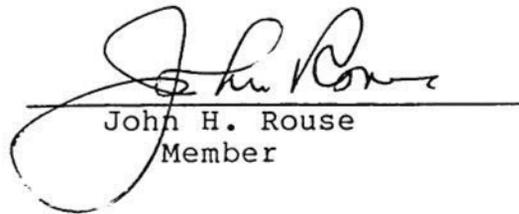
For the Foreign Service Grievance Board.



M. David Vaughn
Presiding Member



Stanley J. Siegel
Member



John H. Rouse
Member