

*L. L. Lishman*  
*1201*

In the Matter Between

Record of Proceedings  
No. G-91-077-State-67

██████████, ██████████,

Grievant

Date: January 17, 1992

and

ORDER ON JURISDICTION

The Department of State

EXCISED

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For the Foreign Service Grievance Board:

Presiding Member:

Howard W. Solomon

Board Members:

Stanley J. Siegel

Marilyn Johnson

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

## I. THE GRIEVANCE

██████████ ██████████, a Senior Foreign Service officer in the Department of State, contends that a selection board statement criticizing his rating of a subordinate was wrongfully placed in his Official Performance File (OPF). When the Department rejected his request that the criticism be removed, he filed a grievance with the agency on July 5, 1991. He received the agency's decision denying the grievance on September 9, 1991, and filed his grievance here on November 15, 1991, requesting the same relief.

## II. JURISDICTION

The Department in its decision wrote that it did not believe that the matter was grievable as the selection board had not exceeded its mandate. Thus the issue for us to decide is whether this case fits the definition of a grievance in section 1101(b)(2) of the Foreign Service Act. That section provides:

For purposes of this chapter, the term "grievance" does not include--

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(2) the judgment of a selection board established under section 602, . . . ;

That statutory language is reflected in the Board's regulations at 22 C.F.R. § 901.18(c)(2), which states:

...except that alleged procedural violations of law, regulation or collective bargaining agreement or prohibited personnel practice(s) arising under these procedures are grievable;....

Section 602 of the Act requires the Secretary to establish selection boards to evaluate the performance of members of the Service, make recommendations for certain personnel actions listed in that section and "for such other actions as the Secretary may prescribe by regulations." Regulations at 3 FAM 556 Appendix A (Precepts for the 1990 Senior and Intermediate Foreign Service Selection Boards), specifically Part IV, subsection B.3.a., require selection boards to identify rating and reviewing officers who merit commendations or criticism for the quality of evaluations they prepared in the most recent rating period. In that regard, the regulations state that "[b]oards should take special care to identify reports in which the block rating for potential is not adequately supported by the narrative statements,...."

The selection board's criticism of grievant was limited to the lack of supporting narrative for his choice of the highest level of potential for greater responsibilities for his subordinate.

It is necessary to consider ██████'s allegations in light of the above provisions of law and regulation to determine if any part of his grievance comes within our jurisdiction. We address each allegation in the order presented in his submission.

1. ██████ alleges that the selection board members "failed to properly evaluate the rated employee's performance folder as required by 3 FAM 556.1-3.a." He contends that there

were awards and letters in the rated officer's performance file that not only amply supported his rating but also refuted the selection board's criticism of the rating.

Grievant is clearly protesting that the selection board used faulty judgment when it chose to criticize the subject rating. As indicated previously, this is not a grievable matter. At any rate, the selection board could have concluded that the letters and awards were for one time occurrences and not sufficiently reflective of the rated officer's potential across a normal career span as to justify the highest potential rating.

2. Grievant says that the selection board wrote that the examples he used were of "normal, not exceptional, activities." He complains that nowhere do the precepts or instructions for writing EERs even define the term "exceptional" and never refer to exceptional versus normal examples. He also argues that his examples did justify the rating of "exceptional potential."

The terms normal and exceptional are not so technical that they require definition before the selection board may use them. They are words of common usage, and we must assume that the selection board members used them properly. We conclude here, as above, that grievant is challenging the judgment of the selection board in its criticism of him. This is not a grievable issue.

3. Grievant asserts that the selection board's action

was prejudicial in that it did not identify or document the Review Panel chairperson's OPF "as required" in the precepts.

Grievant is mistaken. The precepts for the 1990 selection boards at 3 FAM 556, Appendix A, page 13, do not require a selection board to identify or document the Review Panel chairperson's OPF. The cited section reads, "Boards may identify review panels which merit commendation or criticism for their efforts to have EER's corrected which do not comply with the regulations and instructions." (Emphasis added.) This is a matter of selection board discretion which we may not disturb unless it is shown to have been wielded arbitrarily or capriciously. No such allegation has been made here.

4. [REDACTED] alleges that the Board failed to give consideration to "Increasing Diversity and Range of Assignments and Their Importance" as required by Part III.C.3.g. of the precepts and a Director General's telegram. He argues that personnel work is a non-traditional assignment and had the selection board given the rated officer credit for such work, it would have recognized that he was doing an exceptional job in an area outside his primary skill code. But he presents no basis for his allegation.

Once again, grievant is asking us to evaluate the selection board's judgment, which the Act forbids us to do.

5. Grievant's last point is that the selection board's actions "indicate that members failed to meet the qualifications of 3 FAM 556.1-2.(A-1), which require that the

members "have the depth and breadth of experience necessary to evaluate the employees designated for consideration by the Boards." He bases his conclusions on an unsupported allegation that "the members were unaware of the operational realities of personnel work in embassies and they completely missed the exceptional nature of the VIP examples...."

Other than that unsupported sweeping conclusion, grievant presents no basis for criticizing the ability and experience of the selection board members. He presents no allegation that any member was not actually qualified for membership on the selection board according to the precepts. The fact that the selection board viewed the support of VIP visitors as a normal part of a personnel officer's duties does not support the conclusion grievant draws. This is merely a difference of opinion between him and the selection board as to the importance of the rated officer's duties and activities as Schulz described them in the criticized rating.

We conclude that the complaint before us is essentially about the judgment of a selection board without any supportable allegation of procedural violations of law, regulation or collective bargaining agreement or prohibited personnel practice and is thus not grievable.

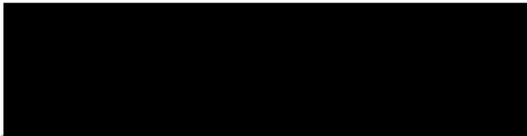
### III. DECISION

The Board lacks jurisdiction under section 1101(b)(2) of the Act and 22 C.F.R. § 901.18(b)(2) of the Board's regulations to consider this complaint. The grievance is dismissed.

FOR THE FOREIGN SERVICE GRIEVANCE BOARD



Howard W. Solomon, Presiding Member



Marilyn Johnson, Member



Stanley J. Siegel, Member