DECISION CHRON
#1191 ~~2094~~

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

[redacted], [redacted],
Grievant

and

The Department of State

Record of Proceedings
No. G-91-082-STATE-70

Date: December 6, 1991

ORDER ON JURISDICTION
AND CONSOLIDATION

EXCISED

For the Foreign Service Grievance Board:

Presiding Member: John J. McCarthy

Board Members: Irwin A. Levy
Raymond L. Perkins

Special Assistant
to the Board: Michael J. Gould

Representative for the Grievant:

Self

Representative for the Department:

Joanne Lishman
Acting Director, Grievance Staff

Exclusive Representative:

American Foreign Service Association

ORDER ON JURISDICTION AND CONSOLIDATION OF GRIEVANCES

[redacted] [redacted]n, a Foreign Service Officer in the Department of State, has filed two grievances with the Board dated November 22, 1991 (identified at the agency level as AGS-91-99 and AGS-91-103). In the former he claims that the Department's refusal to place [redacted]s on his assignment bid list violated the regulations and the open assignment system. The Department advised him on November 5, 1991, that it found his grievance without merit.

In AGS-91-103 grievant alleged that he was denied his right to appeal his involuntary assignment to [redacted], [redacted]a [redacted], and that he was not notified of that assignment before final action was taken, as the regulations require. The Department informed the Board by memorandum dated November 22, 1991, that it had issued its decision on this grievance on November 6, 1991. The Board has not yet received a copy of that decision.

Jurisdiction

A grievance of an individual assignment may not be considered by the Board unless it is alleged to be contrary to law or regulation (section 1101(b)(1) of the Foreign Service Act of 1980 as amended, 22 U.S.C. 413(b)(1)). Since grievant alleges in these grievances that the Department violated its regulations when it took action concerning his assignment, we find that the Board has jurisdiction over the grievances.

Consolidation

In submitting these grievances to the Board, grievant stated he had no objection to the consolidation of his grievances for determination by the Board. The Department also advised that it has no objection to consolidating the two grievances. In view of the apparent similarity of issues involving assignment policies and procedures, the Board believes it will be more convenient for the parties, as well as more efficient, to process the two grievances together. They therefore will be consolidated.

[redacted] filed an earlier grievance (ROP G-91-055-State-45) in which the Board will consider his contention that he was improperly disciplined by the Department's placing him in absence-without-leave (AWOL) status when he failed to report for a scheduled medical examination and to report for duty at his new assignment in [redacted]. It is not clear from grievant's statement regarding consolidation whether or not he would oppose the consolidation of the two new grievances with the one filed earlier -- his statement can be construed as a "no objection" to combining the three grievances. The Department opposes consolidation in that manner on the grounds that (1) the AWOL issue should be resolved without the delay that consolidation would cause, and (2) the questions to be resolved in the AWOL grievance are not closely related to those presented in the new grievances.

We agree basically with the reasoning of the Department on this issue. Moreover, the question of whether AWOL status was

improperly used is a distinct issue that can be determined without reference to the outcome of the grievances involving alleged denial of grievant's rights under the assignment system. In addition, the earlier grievance has been pending over three months and the Board on October 31, 1991, ruled on grievant's discovery requests. Assuming that the Department has complied with the discovery order (or soon will do so), the final submissions of the parties will be due in the near future and a decision on the grievance can then be issued. Accordingly, we hereby decide that the grievance dated August 22, 1991 will not be consolidated with the two grievances dated November 22, 1991.

Filing Time

We call the attention of the parties to the newly-promulgated procedures and time limits that apply to grievances on which agency decisions were issued on or after November 1, 1991. In view of the fact that the Board has been considering the question of jurisdiction and consolidation, we wish to caution the parties to read the instruction entitled "Grievance Time Limits" carefully. Note particularly the paragraph headed "Jurisdiction" on page 5. It provides that the grievant will have 20 days from receipt of the Board's ruling on jurisdiction (as in this case) to file any supplemental submission. This alters the normal time limits, set out elsewhere in the instruction concerning the filing of a supplemental submission by grievant (page 3) and initiating discovery (Pages 6-8).

For the Foreign Service Grievance Board.

[redacted]

John J. McCarthy
Presiding Member

[redacted]

Irwin A. Levy
Member

[redacted]

Raymond L. Perkins
Member