

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between


Grievant

Record of Proceedings
Case No. 2006-002

And

Date: March 9, 2006

Department of State

ORDER: JURISDICTION

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

Lois C. Hochhauser

Board Members:

Theodore Horoschak
Gail M. Lecce

Special Assistant:

Janet M. McGhee

Representative for the Grievant:

Pro se

Representative for the Department:

Joanne M. Lishman
Director
Grievance Staff

Employee Exclusive Representative:

American Foreign Service Association

ORDER

I. ISSUE

On January 20, 2006, the Foreign Service Grievance Board received the appeal of [REDACTED] (grievant) which was dated December 30, 2005. Before the Board may consider the merits of the appeal, it must determine whether the grievant has standing to appeal to this Board.

II. BACKGROUND

Grievant filed this appeal directly with the Foreign Service Grievance Board regarding his termination from Embassy employment. In a May 11, 2005 attachment to this appeal, grievant identified himself as a "Foreign Service National" whose status was later changed to "Local Engaged Staff." The jurisdiction of the Board to hear this matter is thus called into question since the Foreign Service Act of 1980 as amended (the Act) limits the Board's jurisdiction to current members of the Foreign Service; and in some instances, to former members or family members.

Section 1101 of the Act defines a grievance, in pertinent part, as:

(a)(1) Except as provided in subsection (b), for purposes of this chapter, the term "grievance" means any act, omission or condition subject to the control of the Secretary which is alleged to deprive a member of the Service who is a citizen of the United States (other than a United States citizen employed under Section 311 who is not a family member) of a right or benefit authorized by law or regulation or which is otherwise a source of concern or dissatisfaction to the member:

(G) Alleged denial of an allowance, premium pay, or other financial benefit to which the member claims entitlement under applicable laws or regulations

Section 1104 of the Act, which addresses grievances concerning former members, reads as follows:

Within the time limitations of Section 1104, a former member of the Service or the surviving spouse (or, if none, another member of the family) of a deceased member or former member of the Service may file a grievance under this chapter only with respect to allegations described in Section § 1101(a)(G).

Grievant alleges that the American Embassy in [REDACTED]

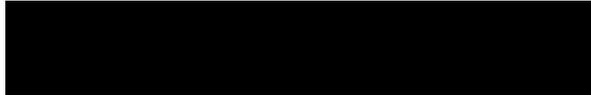
- Wrongfully terminated his employment; and,
- Failed to provide him severance pay.

The Board believes that it lacks jurisdiction over this case because the grievant is neither a former member of the Foreign Service within the definition of that term in Sections 1101 and 1104, nor a United States citizen, as required by Section 1101. Past rulings by the Board have concluded that it does not have jurisdiction over cases brought by Foreign Service Nationals. However, the Board is providing the grievant 30 calendar days from the date of issuance of this Order to refute the Board's conclusion and demonstrate that he does meet the requirements as set forth in Sections 1101 and 1104 of the Act.

III. ORDER

Grievant is directed to submit factual evidence and/or legal argument that he qualifies as a grievant as defined under the provisions of the Foreign Service Act of 1980 as amended. If no response is received within the 30-day timeframe established, the Board shall dismiss the appeal for lack of jurisdiction.

For the Foreign Service Grievance Board:



for Lois C. Hochhauser
Presiding Member



for Theodore Horoschak
Member



for Gail M. Lecce
Member