

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between


Grievant

Record of Proceeding
FSGB No. 2007-016

And

June 15, 2007

Department of Commerce

**ORDER: REQUEST FOR
ADMISSIONS**

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

Edward J. Reidy

Board Members:

James E. Blanford
Gail M. Lecce

Special Assistant:

Joseph Pastic

Representative for the Grievant:

Bridget Mugane, Esq.

Representative for the Department:

Mark Tallarico
Attorney
Office of the General Counsel

Employee Exclusive Representative:

American Foreign Service Association

ORDER: REQUEST FOR ADMISSIONS

This Order deals with a Request for Admissions filed on May 24, 2007 by counsel for grievant in FSGB Case No. 2007-016. As presented it constitutes an improper use of the discovery process. For that reason, that is hereby rejected in part and will not be included in the Record of Proceedings. This Order does not apply to the Requests for Production also filed on May 24.

We have often noted that while we are not bound by the Federal Rules of Civil Procedure, we at times consider them as guidance. This case presents such a circumstance. Requests for Admissions are covered by Rule 36 of the Federal Rules. The gist of that rule is that a party may serve upon any other party a request for the admission of the truth of any relevant, non-privileged matter.

In that these Requests for Admissions are directed at named individuals, (i.e., rater [REDACTED] and [REDACTED]) and not at the opposing party, they are beyond the permissible scope of Rule 36. By its own terms Requests for Admissions are limited to parties to the grievance, not individuals.

Not just that, but the moving party has directed that the named individuals answer the Request for Admissions without “coaching or editing.” This, too, is deemed an inappropriate use of the Rule. Rule 36 provides that the answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party has made reasonable effort to secure such knowledge and information readily obtainable by him. A reasonable inquiry may require questioning third parties, other litigants, or other attorneys in the case. A party responding by claiming inability (lack of information) to answer must also state that he or she has made reasonable inquiry and

that the information known or readily available after undertaking a “good faith” investigation of the sources reasonably available to him or her is insufficient to enable the party to admit or deny. *United States v. England*, 235 F.R.D. 675 (2000).

It should be kept in mind that Requests for Admissions are not substitutes for interrogatories.

For the Foreign Service Grievance Board:



[Handwritten signature]
Edward J. Reidy
Presiding Member



[Handwritten signature]
James E. Bianford
Member



Gail M. Lecce
Member