

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between



Grievant

And

Department of State

Record of Proceedings

FSGB No. 2007-032

Date: November 1, 2007

**ORDER
EXCISED**

For the Foreign Service Grievance Board:

Presiding Member:

Arthur A. Horowitz

Board Members:

Garber Davidson
Lois E. Hartman

Special Assistant:

Joseph Pastic

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. BACKGROUND

On September 24, 2007, the Board notified the parties that it would withhold a ruling on the Grievant's motion to compel discovery and the Department's cross-motion to dismiss the case pending a response from the Department concerning the Board's request for specific information. As set forth in its Memorandum, the Board asked the Department to indicate, for the years 2005 to 2007, whether it funded travel and per diem for any person employed by the Department to attend mandatory leadership training at times other than when the employee was on Home Leave or R&R travel, and if so, how many persons received such funding regardless of the account(s) from which such funds were disbursed. The Board asked the Department to provide the requested information by October 4, 2007.

By letter dated October 3, 2007, the Department submitted a motion seeking to have the case held in abeyance without being required to respond to the Board's request for information. The stated grounds for the motion are that the Department and AFSA are purportedly in the final stages of negotiating an agreement whereby employees such as grievant would be eligible for promotion consideration in June 2008 without having completed mandatory leadership training and could be promoted contingent upon their completion of the training within a specified period thereafter.

On October 6, 2007, grievant filed a Motion for Sanctions and Default Judgment, contending that the Department had contemptuously "ignored" and in "bad faith" failed to comply with the Board's authority to compel discovery, and requesting default judgment as a consequence.

II. DISCUSSION AND FINDINGS

Having carefully considered the foregoing motions, the Board makes the following findings. First, the Department did not contemptuously ignore the Board's request for information. While it would have been better practice for the Department's October 3 motion to hold the case in abeyance to have reached the Board prior to the deadline for submitting the requested information, the Board finds that the Department acted in good faith. The Department did not ignore the Board's request, but responded before the stated deadline. In addition, the Board finds that the Department had a colorable basis for requesting that the case be held in abeyance -- that is, the claim that an agreement was being negotiated with AFSA that might not only obviate the need to provide the requested information but moot the entire appeal by providing complete relief to grievant. Under these circumstances, we find that the Department's actions come within the parameters of the Board's discovery and appeal procedures. Accordingly, grievant's motion for a default judgment is denied.

We also deny the Department's motion to hold the case in abeyance. In our judgment, it would not effectuate the Board's policy favoring expeditious disposition of pending grievance appeals to await developments in connection with negotiations between the Department and AFSA that might provide grievant with the relief that he is seeking in this case. At this point in time, it is speculative whether such an agreement will be finalized and executed; if it is, when such agreement might be reached; and what the terms of such an agreement would be. These are matters completely outside of grievant's control. We further note that this case is time-sensitive in the sense that the

relief requested, if granted, would be effective only if it were ordered in the relatively near future.

Finally, and as a corollary to denying the Department's motion to hold the appeal in abeyance, we find that the information requested by the Board on September 24, 2007, should be submitted forthwith. We note that as a consequence of the Department's motion in lieu of providing such information, the deadline already has been extended from October 4 to and beyond the date of this Order. Accordingly, the Board again asks that the previously-requested information be submitted promptly upon the Department's receipt of this Order, and not later than ten days of the receipt of this Order.

III. ORDER

The Department's motion to hold this case in abeyance and the Grievant's motion for default judgment are both denied. The Department is directed to submit forthwith the information previously requested by the Board on September 24, 2007.

For the Foreign Service Grievance Board:



Arthur A. Horowitz
Presiding Member



Garber Davidson
Member



Lois E. Hartman
Member