

**BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD**

In the Matter Between

  
Grievant

Record of Proceedings  
FSGB No. 2010-023

And

December 9, 2010

Agency for International Development

**ORDER: DENIAL OF REQUEST  
FOR FURTHER DISCOVERY AND  
CLOSURE OF RECORD OF  
PROCEEDINGS**

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

Arthur A. Horowitz

Board Members:

Jeanne Schulz  
Nancy M. Serpa

Senior Advisor

Joseph Pastic

Representative for the Grievant:

Bridget R. Mugane, Esq.

Representative for the Agency:

Harmony Wade, Esq.  
Attorney Advisor  
Labor & Employee Relations Division

Employee Exclusive Representative:

American Foreign Service Association

**ORDER: DENIAL OF REQUEST FOR FURTHER DISCOVERY AND  
CLOSURE OF RECORD OF PROCEEDINGS**

On December 2, 2010, counsel for the Agency for International Development (USAID, agency) filed a request to proceed with what she described as a second “more focused” round of discovery following grievant’s submission of a timely rebuttal dated November 24, 2010 (as amended on November 29) to the Agency’s August 27 response to grievant’s appeal challenging her denial of tenure. In a second communication dated December 6, 2010, counsel for USAID claimed she had been advised by a representative of this Board that a hearing was “automatic” in “termination cases” and therefore “was relying on a second round of discovery and a hearing to make the Agency’s case.” In her second communication, counsel for USAID stated that she might have “misunderstood” what she had been told and that it “may be impractical for the Agency to depose the Grievant at this point,” but urged the Board to grant the opportunity for her to file a “reply brief” in response to grievant’s rebuttal.

Oppositions to the foregoing requests were filed both by grievant’s counsel and a representative of the American Foreign Service Association (AFSA). These oppositions pointed out, *inter alia*, that grievant responded to the agency’s initial discovery request on July 27, 2010; that any further discovery request must be made pursuant to FSGB regulations (a copy of which was provided to counsel for USAID at the outset of this case) within 20 days after receipt of the response to the first discovery request; that the agency’s pending request for further discovery more than four months later is very untimely and would unnecessarily delay the proceedings; and that no good cause has been shown for allowing further extraordinary submissions or additional discovery.

We find that the Board's regulations are clear, and that counsel for the agency not only had a copy thereof but also was provided with accurate timelines and explanations concerning applicable Board procedures when she requested such assistance on several occasions during the processing of this appeal. That counsel may have "misunderstood" what she read or was told does not constitute "good cause" to depart from established procedures which clearly state that "the [grievant's] rebuttal will be the final submission and the record will be closed" in cases where, as here, the agency has not earlier reached a final decision in the agency level grievance. There is no right to a second round of "more focused" discovery except as provided in the Board's regulations when sought within 20 days of receiving the opposing party's initial response to the discovery request. Moreover, since this case involves issues concerning the alleged violation of the parties' settlement agreement and a denial of tenure rather than the imposition of discipline, there is no "automatic right" to a hearing and none has been requested.

Accordingly, the agency's request for leave to submit a further reply brief or to engage in additional discovery is denied in the absence of good cause shown.

In accordance with procedures established by the Foreign Service Grievance Board (Board), the parties have submitted all required documentation necessary for Board review of the grievance appeal. Prior to doing so, the Board is now closing the Record of Proceedings (ROP), and will provide a decision presently.

Absent additions or corrections to the attached ROP inventory from the parties within ten calendar days of the receipt of this Order, the ROP will be considered closed as of the date of this Order.

For the Foreign Service Grievance Board:

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Arthur A. Horowitz  
Presiding Member

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Jeanne Schulz  
Member

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Nancy Serpa  
Member