

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

[Grievant]
Grievant

And

[Department]

Record of Proceedings

FSGB No. 2010-039

January 13, 2011

DECISION

For the Foreign Service Grievance Board:

Presiding Member:

Arthur A. Horowitz

Board Members:

John Campbell
Garber A. Davidson

Special Assistant:

Margaret C. Sula

Representative for the Grievant:

Pro Se

Representative for the Agency:

Joanne M. Lishman
Director
Grievance Staff

Employee Exclusive Representative:

American Foreign Service Association

CASE SUMMARY

HELD: Grievant failed to prove by preponderant evidence that three out of four disputed statements in his [Year] EER were factually incorrect or addressed actions not within the rating period. The statement that grievant successfully challenged was found to lack sufficient clarity or specificity, was unnecessarily negative and therefore was ordered to be expunged from grievant's EER and other personnel records.

OVERVIEW

Grievant, a former FS-01 Officer at U.S. Embassy [Host Country], alleged that four statements made by his rating officer in his [Year] EER were factually incorrect. The statements appeared in the sections of the EER labeled "Evaluation of Performance" and "Potential," and came under the core skills designated Communication, Management, and Interpersonal.

The Board found that three of the disputed statements were factually accurate and balanced. The statement on "Interpersonal Skills" was critical of grievant's relations with the Management Section and the need to develop a better sense of the responsibilities of and demands placed on the other Embassy offices. While the evidence showed that grievant worked hard for the [Section], his efforts were often marked by a lack of appreciation or understanding of the needs of other sections. Grievant demonstrated some resistance to procedures which he viewed as obstructive, including measures taken to ensure security of information in a center to which the public had access. Another example of his lack of respect for other Embassy offices was evident in his advocacy for hiring an outside contractor as opposed to Foreign Service family members despite the Department's policies on hiring family members. As a result of the evidence presented, the Board found the EER's statements in this area were factually accurate and not of a falsely prejudicial character.

A statement the rating officer made under "Communications Skills" with respect to the need for an education cable was critical of grievant's time-management and drafting skills, but we believe this statement also to be accurate and a fair evaluation of the situation. Education was considered a high priority by the Ambassador and the DCM, and grievant was apprised of the need to prepare and issue a cable within a certain time frame. He failed to do so, stating that the cable was the "least pertinent of the tasks facing the [Section]" at the time. Although grievant's section was clearly overburdened during the time that the DCM had requested the cable, the evidence indicated that the grievant was unable or unwilling to set priorities in accordance with those of mission management.

A comment in the EER by the rating officer that the grievant would go all out to support his staff, even when it was counterproductive, if he felt his staff would be disadvantaged, was not shown to be true and was ordered expunged on that basis.

Finally, the Embassy review committee that approved grievant's EER was found not to have been improperly pressured or influenced by the DCM as alleged.

DECISION

I. THE GRIEVANCE

[Grievant], an FS-01 former Officer at U.S. Embassy [Host Country], filed an agency level grievance on April 12, [Year], in which he requested that four statements made by his rating officer be removed from his Employment Evaluation Report (EER). He claimed that the statements are factually incorrect, unsubstantiated, address things that did not occur within the rating period, and are grossly unfair. Grievant reserved the right to revise his own comments in the EER if any changes were made to the rating officer's comments. On July 20, [Year], the agency issued its decision letter in which it denied the grievance in its entirety, stating that grievant failed to show by a preponderance of evidence that the grieved EER statements are inaccurate or falsely prejudicial. On August 9, [Year], grievant filed a grievance appeal to this Board seeking the same relief he had requested in his agency level grievance. The [Department] (the Department, agency) responded by stating that it would not file a response to the grievance appeal, but would rely upon the argument set out in its decision letter dated July 20. Grievant stated that he would not file any additional evidence or argument in support of his appeal unless requested to do so by the Board. The ROP was closed on November 26, [Year].

II. BACKGROUND

Grievant served as the Director of the [Section] in [Host Country] and was the [Officer] Advisor to the Ambassador and Deputy Chief of Mission (DCM). He supervised a staff of approximately 21 American and [Host Country]ese employees. The DCM was his rating officer for his EER, and the Ambassador was his reviewing officer. The EER at issue covered the rating period of April 16, [Year] through March 12, [Year]. The four statements in the rating section of

the EER that grievant complains about and seeks to have removed are found in the sections entitled “Evaluation of Performance” and “Potential.”

In his August 9 grievance appeal, grievant sought to have the four statements removed from his EER, and to amend the description he prepared of his own accomplishments as stated in sections VII and X¹ of the EER.

III. POSITIONS OF THE PARTIES

Each of the four disputed EER statements is quoted below, followed by the positions of both grievant and the Department applicable to those statements.

1). Communication Skills: “Similarly, [Section]’s Mission Strategic Plan inputs included only traditional outreach rubrics and nothing on education which has become such a key focus of the section’s work.”

Grievant

Grievant avers that the first statement regarding the Mission Strategic Plan (MSP) is factually incorrect and grossly unfair. It is incorrect in his view because grievant discussed education in the narrative section of another mission document (Goal Paper #4); he also claims that the statement is “inadmissible” because the Mission Goal Paper was drafted in January [Year], prior to the rating period at issue which began on April 16, [Year]. Grievant further claims that the statement is grossly unfair because he followed explicit guidance from the Bureau of East Asia and Pacific Affairs, Office of Public Diplomacy and the MSP office to use only the indicators on the list approved by Washington. Education did not appear on the list. His rating officer redrafted the indicators to include education, but Washington returned the indicators as unacceptable and requested a rewrite. Grievant provided a final draft that included education as an indicator and was fully acceptable to Washington.

¹ Grievant cited to Section IX of the EER in error. Section IX is the Review Statement written by the Ambassador, and Section X is the rated officer’s statement prepared by grievant.

Department

With respect to the indicator on education, the Department states that the Bureau of Educational and Cultural Affairs (ECA) never stated that education was inadmissible as an indicator. ECA offered to provide feedback if grievant had requested it, but there is no evidence that grievant sought such advice. There is no evidence that ECA had instructed posts to use only approved indicators. The Mission contacted a representative of the EAP/PD office in the Department concerning the MSP indicators, and the latter advised that although posts are “strongly encouraged to use some variation” of the indicators supplied by EAP/PD, he was unaware of any “iron clad requirement” that they do so.

The Rating Officer stated that the two most important examples of grievant’s failure to understand why written products that she had requested were important or how they might be used, were the education cable and the Mission Strategic Plan (MSP) which contained the posts’ indicators. She and the grievant had discussed the MSP well into April [Year], thus making it admissible for the [Year] rating period. She further averred that EAP/PD does not set the Mission’s goals and objectives (indicators), since that is clearly the role of the Ambassador. The Deputy Principal Officer of the consulate in [City], who worked with grievant on the MSP, advised HR/G that setting indicators was a process that originated at post to be discussed with the applicable offices in Washington. She alleged that grievant had been “uncooperative” in that he did not seek or accept inputs from others.

2). Management Skills: “He goes to bat—sometimes when it is counterproductive to do so—if he feels his staff is disadvantaged in any way.”

Grievant

The second statement dealing with Management Skills is “inadmissible” in grievant’s terms because it is factually incorrect and unsubstantiated. Neither the agency’s decision letter

nor the statement by the Rating Officer contains examples to support the allegation during the [Year] rating year. Grievant did not go to bat for his staff if they were “disadvantaged in any way,” and moreover grievant only took actions to protect his staff in the previous rating period, not during the current period. During the previous year, grievant managed to have the Embassy modify the regulations for Foreign Service National (FSN) employees which permitted liberalizing nominations of staff for awards, and permitted greater career mobility within the offices to which they were assigned. These examples of improved management efficiency should have been mentioned, but were not.

Department

The DCM stated that grievant needed to take a broader Mission perspective and that [Host Country] is a particularly challenging counter-intelligence environment, necessitating unique responses. Focusing on one particular incident in which grievant sought to hire a contractor rather than a family member, she quoted from a statement supplied by Human Resources Officer [Name 1] in which Ms. [Name 1] recounted that she had explained to grievant the policy and rationale for giving family members preference over FSNs in hiring. [Name 1] related that grievant had argued with her, telling her his interpretation of the regulations that varied from the advice she had given him. [Name 1] described grievant’s appeal of her decision to the DCM as a sign of his “combativeness,” and further stated that grievant would disagree even though the regulations were clear.

With regard to grievant's claim that he successfully proposed a modification to a regulation pertaining to FSNs, the Department contends that insufficient specificity was provided to allow for a direct response, but that in any event the matter raised is irrelevant to the issues presented in this appeal.

3). Interpersonal Skills: “[Grievant] has gone a long way to repair poor relations with the Management Section and his efforts have borne fruit in greater support for his plans to expand the section. As he serves in more senior positions, he will need to develop a better sense of the responsibilities of and demands placed on other sections of the Mission.”

Grievant

In his grievance appeal of August 9, grievant withdrew his objection to the first sentence in the statement relating to Interpersonal Skills. In his view, the second sentence contains false material taken out of context. However, because none of the cited examples relates to the “responsibility of and demands placed on other sections of the Mission,” grievant disregards them in his grievance appeal. He notes that the Ambassador in his Review Statement stated that “My interaction with [Grievant] has covered a number of fields, all of which were handled with a high degree of professionalism and performance.” The one request for support from another embassy office that is relevant concerned a non-family member whom grievant sought to hire as Coordinator for the international Education Conference. He felt that the candidate he selected was well qualified and “had the full range of skills and contacts, both [host country] and American, needed to organize the Conference.” The two American family members who applied for the job were new to [host country] and to [Section] work, did not know the issues and thus were not appropriate. Grievant appealed to the HR officer at post to be flexible in her interpretation of the hiring regulations (which favored eligible family members). When the HR officer rejected his appeal, grievant asked the Deputy Chief of Mission (DCM), his rating officer, for an exception to the rule. She refused to permit an exception. These requested actions to make an exception were appropriate, and would be made by any responsible [Officer] to ensure that the human resources were made available. This was a request, not a demand, and therefore the second sentence of the statement is unfair and should be deleted.

Department

The Department responds to the grievant's claim with statements from several officers who were in [Embassy] during the rating period and who represented other sections in the Embassy. [Name 2], the former Cultural Affairs Officer and Assistant Public Affairs Officer, commented that she tried to smooth relations between the [Section], the Front Office and other Embassy sections. She stated that this was particularly true with the Information Technology Office and other offices within the Post's management section. She stated that grievant did not have good relations with other U.S. direct-hire colleagues or with other heads of section.

The former Regional Security Officer (RSO) also commented on grievant's relations, in particular with the General Services Section (GSO) and the RSO office. Grievant had requested various items both for his house and his office that were not available or easily obtained. In one case, he alleged that his request for an office air conditioner which was installed resulted in a neighbor's retaliation by damaging his car. He insisted that the RSO take action with the police, although there was no proof of the neighbor's involvement. Finally, grievant's most unreasonable request according to the RSO was that he, the IMO and the head of the IT section permit the placement of Open net computers in the Information Resource Center (IRC) to which the public had access. According to the RSO, he and others repeatedly told grievant that the Departmental regulations clearly state that such computers cannot be installed in areas of public access.

The Management Officer, [Name 3], stated that grievant had placed a number of demands on the Management section that caused friction within the Management Office and made it difficult for them to work with grievant.

[Name 4] from the IT Section recounted the tension that developed between his office and grievant over placing certain computers in the IRC, including some that grievant had purchased on the open market. According to [Name 4], grievant opened the IRC to the public without complying with certain security requirements. The friction increased as grievant accused IT of not supporting and in fact hindering the work of the PA Section in establishing various public outreach programs.

[Name 4]'s supervisor, [Name 5], the head of the Information Management unit (IM), also commented on grievant's relationships with the IM section. Regarding a security device that prevents unauthorized access to the Department's network, and that was installed in the IRC, Donaway believed that grievant's attitude was dismissive of the rules and only concerned with his section's goals at the expense of others.

The DCM summarized her reasons for defending the second sentence in the EER statement. She said that grievant "fashions himself a bit of a Don Quiote [sic] tilting at bureaucratic windmills." When grievant had a legitimate concern, she would act on his behalf. However, grievant demonstrated little respect for such important matters as the RSO's security requirements or the efforts of the IM unit in attempting to provide public access in a challenging counter-intelligence environment. Once grievant had exhausted his appeals to the section heads, he would appeal to the DCM to intercede on his behalf, but where the administration of a rule was reasonable, it was a waste of time to pursue an exception. She repeated the complaints that HR lodged when grievant attempted to hire the U.S. contract employee for the education conference; this resulted in the need for the Human Resources Office, the Management Counselor and finally the DCM to explain to grievant the rules on visas and hiring outside contractors.

4). Communication Skills: “[Grievant] did not fully appreciate how front channel reporting on the issues he was dealing with operationally could also help advance mission goals; for example, a reporting cable on the development of the education sector and challenges facing U.S. institutions trying to set up programs here was produced under protest and months after it would have been most useful to AID and EAP programming decisions.”

Grievant

The fourth statement relating to Communication Skills and in particular to a cable that grievant was tasked with drafting on education contains material that is “grossly unfair.”² Grievant argues that his extraordinarily heavy workload prevented him from drafting the cable as soon as the rating officer wanted. To manage this workload, grievant had to set priorities. In his terms, “[t]he education cable did not rise to the top of the list of priorities not because it was unimportant but because it was the least pertinent of the tasks facing the Public Affairs Section.” As the Mission’s “point person” for education and for the Ambassador’s Education Initiative, his judgment about priorities cannot be ignored. He was working almost 70 hours a week under severe time pressure during those months, and he simply could not research and draft the education cable within the time frame set by the DCM. Grievant disputes the DCM’s assertions that the cable was mishandled and mostly copied from conference materials.

Department

The DCM stated in regard to the education cable that grievant failed to understand why some writing and briefing is a priority to the mission, even when he was so instructed by the Front Office. She recounted her request that an education cable be prepared within a month, and her repeated follow-ups. She acknowledged that the [Section] was busy, but stated that the education cable was a priority. The cable was completed at the end of January, which was too late for certain important events and decision-making deadlines. She claimed that the draft was

² The appropriate standard of review by the Board in grievances concerning EERs is set forth *infra* at pp. 12-13.

much too long and was mainly copied from conference materials. Two officers in the Embassy spent hours editing it. The DCM's position was supported by [Name 6], the Deputy Principal Officer (DPO) of the American consulate in [City]. She agreed that education in [Host Country] was a high priority for the Ambassador, and that grievant's first draft was overlong, thus needing extensive editing and redrafting. [Name 6] was called upon to assist with the redrafting.

[Name 7] of the Political Section offered a statement in which he recalled that the cable was very late for clearance, and when it arrived, that it needed much editing. He recalled that grievant had left it to his subordinates to do much of the rewrite. Goldman criticized grievant's remark that no office had been "waiting for information about education in the form of a cable," stating that cables are meant to inform policy discussions proactively. He further noted that grievant's busy workload was insufficient reason for the delay, because most officers learn early to manage time and set priorities. Grievant should have given the cable higher priority, since it was a direct request from his supervisor (who was also the DCM).

Inaction by the EER Review Panel

Grievant

Finally, grievant alleges that the head of the EER Review Panel that reviewed his EER at post permitted the EER to go forward rather than return it due to a lack of specific examples. The reason for this was that he feared his own EER would suffer if he did not sign the statement approving grievant's EER, despite the fact that he knew it was false. Grievant withdrew comments made about other panel members whom he alleged also had been concerned about their own EERs if they had voted to send his EER back for specific examples to be provided by the rating officer.

Department

The chair of grievant's EER panel, [Name 8], stated that he did not feel pressure from the Front Office during the review of grievant's EER. He stated that he did not have anxiety about his own evaluation, and that he did not hear from other panel members about similar pressure or anxiety. Other panel members stated that they also did not feel pressure from the DCM or others with respect to their own EERs during their review of grievant's EER.

IV. DISCUSSION AND FINDINGS

In all grievances other than those involving disciplinary actions, the grievant has the burden of establishing, by a preponderance of the evidence, that the grievance is meritorious. 22 CFR § 905.1(a). Grievant alleges that his EER is inaccurate, unfair and unbalanced. He brings his grievance pursuant to Section 1101 of 22 U.S.C. § 4131(a)(1)(e), which defines "grievance" to include any "alleged inaccuracy, omission, error or falsely prejudicial character of information in the official personnel record . . . or which is or could be prejudicial to the member."

In cases involving allegedly flawed EERs, the Board has adhered to the principle that a performance evaluation need not be perfect to be acceptable; it need only meet reasonable standards. As the Board stated in FSGB Case No. 93-15 (December 23, 1993), "EERs must meet reasonable standards; perfection is not required. The critical test is whether an EER fairly and accurately describes and assesses performance and potential with adequate clarity and documentation to constitute a reasonably discernible, objective, and balanced appraisal." Moreover, an EER is entitled to a presumption of regularity, especially where comments made therein are stated correctly, fairly, and in good faith, consistent with governing regulations. *Shea v. United States, et al*, Civ. No. 00-748, (D.D.C., RCL June 27, 2001).

We will analyze each EER statement identified by grievant as inaccurate or prejudicial, and determine if grievant has carried his burden of proof to demonstrate harmful error.

1). Communications Skills: “Similarly, Public Affairs’ Mission Strategic Plan inputs included only traditional outreach rubrics and nothing on education which has become such a key focus of the section’s work.”

Grievant argues, *inter alia*, that the statement is “factually incorrect” because he had discussed education in another mission document, and that the statement is “inadmissible” because the Mission Goal Paper was drafted prior to the rating period at issue. We do not agree. The statement only makes reference to the Public Affairs Mission Strategic Plan, and grievant does not deny that education was not mentioned in that document as originally submitted. Secondly, the rating officer stated that she and the grievant had discussed the MSP well into April [Year], within the rating period, an assertion which grievant has not challenged. We therefore find that the statement is “admissible” in terms of the EER in question.

Grievant also asserts that the Washington bureau, EAP/PD and the MSP office had issued guidance in which *only* indicators on the Washington-approved list could be used in the MSP, and those indicators did not include education. The rating officer rebuts this assertion by stating that the Bureau of Education and Cultural Affairs (ECA) had not declared that education was inadmissible as an indicator and that there was no evidence to suggest that ECA had instructed posts not to include education in their MSPs. She cited guidance from EAP/PD which stated that there was no “iron clad” requirement that the post follow the “approved” indicators exclusively.

The guidance that grievant relies on includes a State cable sent by the EAP Assistant Secretary from EAP/PD dated December 11, [Year], which contains the following:

. . . For public Diplomacy MSP Goal Papers, posts should use indicators that appear on the list of Office of Management and Budget (OMB) approved PD performance indicators and reflect PD’s adherence to federal government mandates.

Grievant cited additional instructions from the EAP/PD Director in an e-mail dated January 30, [Year], which also advised that for Public Diplomacy MSP Goal Papers, “posts should use 15 indicators . . . that appear on the list of [OMB] approved PD performance indicators, which reflect PD’s adherence to federal government mandates.” In both correspondences, the posts are given the name of [Name 9] to contact should there be any questions regarding the public diplomacy indicators and goal papers.

We find the grievant’s assertions unpersuasive. Neither the cable nor the e-mail contains mandatory language as grievant suggests, but rather the posts are told that they “should” use the set indicators. Additionally, the cable and e-mail discuss indicators that should be discussed and do not, as he asserts, exclude discussion of other indicators. There is no evidence that he sought advice from Ms. [Name 9] or any other Washington contact concerning the propriety of including education as an indicator. He was aware, as he acknowledges throughout his grievance, that education was a high priority of the Ambassador and the DCM. At the least, a cable or phone call to Washington might have given grievant some assurance that inclusion of such an indicator would be permitted, or it could have confirmed his view of the matter. Instead, it appears that grievant failed to initiate such a contact that could have prevented an impasse whereby the DCM and others were forced to draft a cable that was later deemed unacceptable. The grievant’s failure to seek input from others on this question was commented on by the Deputy Principal Officer of constituent posts [City], who termed grievant as “uncooperative.” We find that grievant has not demonstrated that the challenged statement is either inaccurate or of a falsely prejudicial character.

2). Management Skills: “He goes to bat—sometimes when it is counterproductive to do so—if he feels his staff is disadvantaged in any way.”

This disputed statement was not supported by specific examples in the EER. Based upon the responses filed with the Board, however, the only cited evidence centered on grievant’s attempt to hire a non-family member for the position of Coordinator for the international Education Conference. Although the record is not entirely clear, apparently the non-family member was a contract-hire employee whom grievant wanted to hire as a full-time employee. The Embassy gave preference to American family members in hiring for certain positions, but grievant sought an exception to this rule so that he could hire the contract-employee. Human Resources officer [Name 1] described grievant’s actions on this issue in her statement as follows:

I do know that if you tell or show [grievant] the regulations, he will disagree with you although it is starr[ing] him in the face because they are not saying what he wants. Therefore, there is this back and forth, and combativeness which he takes to a higher level for a decision to be made. I had an issue with him hiring family members because he wanted to hire this lady who was working with him as a contractor. I knew nothing about this arrangement until when I sent him the qualified candidates for his positions. He wanted to know the reason the lady’s name was not on the list because she is qualified. I had to explain to him that although she is qualified and an American, but family members are given preference in hiring. He argued and told me his interpretation of the regulations in the FAM, etc., were [sic] different from what I said. He went to the DCM to explain the situation, this is after my 2 meetings with him.

. . . I guess everyone does not have the patience and energy that I have to go line by line, exhausting a lot of time to explain, and even then, if he did not have his way, then, prepare to go another step. I guess he wanted things done his way, regardless.

Ms. [Name 1]’s statement was the only evidence that the Department presented to support the challenged comment. The DCM makes reference to [Host Country] as “a particularly challenging counter-intelligence environment, necessitating unique responses as I

and others explained repeatedly to [Grievant],” but does not link her comment to the challenged EER statement. Nothing else in the record explains how the grievant went to “bat” for his employees other than the example of the contract-employee who does not seem to fit the category of “disadvantaged” staff. Grievant argues that the comment is not relevant under the Management Skills competency, and chooses to address the issue under the Interpersonal Skills competency.

We conclude that the record is lacking in evidence that would support the accuracy of the criticism that grievant went to bat for his staff (rather than to pursue his own preferences), even when the objective was “counterproductive.” His advocacy for the contract-employee may have been overbearing and combative as Ms. [Name 1] suggests, and this may show some deficiency in grievant’s interpersonal skills; however, we see no proof of a pattern of counterproductive results as a result of defending his staff as the EER statement suggests.³ Clearly the Embassy policy on giving hiring preference to Foreign Service Officers’ family members is considered critical for maintaining post morale and utilizing U.S. citizens in a productive manner. Grievant’s adamant resistance to the policy in this case reinforces the pattern of attempting to evade policies with which he disagrees as well as a lack of respect for other Embassy sections that he displayed during the rating period. However, we do not believe the incident itself is evidence of his allegedly inflexible support for staff as the comment suggests. Despite being denied by grievant, no other evidence whatsoever was introduced by the Department to substantiate the critical comment. We find, therefore, that the comment is inaccurate and of a falsely prejudicial character and must be deleted from the EER.

3). Interpersonal Skills: “[Grievant] has gone a long way to repair poor relations with the Management Section and his efforts have borne fruit in greater support for his plans to

³ Grievant’s assertion that the contract-employee was more qualified for the position of Coordinator than the other candidates was not disputed by the Department.

expand the section. As he serves in more senior positions, he will need to develop a better sense of the responsibilities and demands placed on other sections of the Mission.”

Since grievant withdrew his objection to the first sentence, we will only review the second. Grievant argues that the sentence contains false material taken out of context, and that none of the examples cited by the Department relates to the “responsibilities of and demands placed on other sections of the Mission.” He defended his actions with HR and the DCM in trying to get an exception to the hiring rules so that he could hire his candidate for the conference coordinator. He termed this a request and not a demand, and an action that would be taken by any “reasonable [Officer] to ensure that the human resources were made available.”

The Department presents statements in support of the EER language by four representatives of various sections in the Embassy, plus the DCM, and the statements are almost uniformly critical of grievant’s relationships with his colleagues. The Management Office team, which included the Management Officer, the Information Technology Office, the Information Management Office, and the Regional Security Office, all provided commentary on specific instances that represented either grievant’s lack of understanding of (or unwillingness to understand) the rules, requests that were beyond the capacity of the Mission to comply with or requests that ran counter to the established security protocols.

The former Regional Security Officer (RSO), [Name 10], described grievant’s relationships with the General Services Section (GSO) as well as the Security Section. Mr. [Name 10] recounted the incidents involving the excessive order for furnishings grievant had requested for his house and the air conditioner which caused problems with the [Neighbor]. He then described the most “unreasonable request” made of his own section as follows:

The most unreasonable request toward my section . . . was Mr. [Grievant] repeatedly insisting that I and [Information Management Officer (IMO) and the head of the IT section] . . .

allow the placement of Open net computers in the [Information Resource Center (IRC)]. The IMO and I several times told Mr. [Grievant], and the DCM, the applicable FAM regulations that clearly state Open net cannot be installed in areas that have public access to the computers, which the IRC had. I cannot remember the exact FAM regulations, but it is clearly stated, and neither the IMO nor myself was going to override the FAM regarding cyber regulations. Especially in a country such as [Host Country] where the threat rankings are classified.

The Management Officer, [Name 11], commented on grievant's relations with his section as follows:

[Grievant] made a number of demands on the Management section, particularly in the IM section, and couched them in emails in such a way that they were accusatory and adversarial. When I would talk with him face-to-face about these issues, he was a good deal more malleable; but inevitably, he would return to an antagonistic tone in subsequent emails. My Management employees tried patiently to explain to him the reasons for why things were done in a certain way; but he seemed to refuse to understand or accept the given rationales. This would raise the ire of his Management interlocutors, which made it harder for them to work with [Grievant]; and so it went in a downward spiral -- which I tried my best to circumvent, but was only partially successful.

[Name 4] of the IT Section explained the need and importance of security safeguards for operating a system of publicly accessible computers with Internet connections in [Host Country]. According to Mr. [Name 4], grievant opened an Information Resource Center (IRC) that was not in compliance with RSO and IT regulations or guidelines. [Name 4] offered the following comment regarding grievant's actions and attitude:

. . . Mr. [Grievant] opened the IRC to public access without coming into full compliance of the regulations and guidelines. Through numerous discussions with not only Mr. [Grievant] but also his staff, he was advised the IRC could continue to operate ONLY (capitalization in original) if progress was made toward full compliance. These discussions appeared to fall on deaf ears as no further efforts were made to meet security requirements for many months. Since no apparent efforts on his part were being made, with the full support of the RSO, he was advised of a firm deadline

to meet security requirements and if not met, then the IRC internet connection would be terminated. Faced with this situation, Mr. [Grievant] proceeded to accuse IRM of NOT (capitalization in original) supporting and in fact hindering the PA Section in establishing various public Outreach Programs.

As a result of this disagreement, according to [Name 4], the DCM directed grievant to attend a course on Information Systems Security for Managers so that he could better understand the mandates to which IRM needed to conform.

The chief of the Information Management (IM) section, Mr. [Name 5], supported the rating officer's assessment and stated that the EER comment is "very accurate." Making reference to [Grievant]'s unwillingness to comply with IT security, [Name 5] quoted an e-mail grievant sent him complaining about the security software that IT installed to prevent unauthorized access to the Department's network in which grievant said the following:

[T]his incident seems to me to be yet one more example of steps IRM has taken to meet regulations of dubious value with seemingly little consideration given to the costs incurred by those of us who use the computer network to reach the goals the Embassy is here to accomplish.

The DCM in her statement acknowledged that fighting the bureaucracy sometimes could be positive since systems won't improve if people blindly follow the status quo. She said that when grievant had a legitimate concern, she supported him. She then pointed out, however, the lack of respect in her view that grievant had for other sections, namely the RSO and IM. She cited his unwillingness to accept decisions that were contrary to his views, and that pursuing exceptions to such policies was simply a waste of time. She stated that she counseled grievant on two occasions in early [Year] concerning some of these issues.

In deciding whether the rating officer's statement is unbalanced or inaccurate, the Board's obligation is to weigh the evidence and make its determination based on the evidence

presented. The disputed statement is in one sense an admonition but also positive advice about what grievant needs to do as he moves to more senior positions. The DCM cites the need for grievant to develop a sense of the roles that other sections in the Embassy perform so that he will have a greater appreciation for the needs and constraints of those sections. Given the evidence presented, we do not find that this statement is inaccurate or of a falsely prejudicial character. There is an undisputed pattern of impatience and resistance expressed by grievant when his objectives or goals are somehow interrupted or conditioned by the needs of other sections.

We find particularly telling grievant's attitude regarding security safeguards and the Open net system. [Host Country] is indisputably a high threat post, and it is only logical that greater precautions are needed to safeguard information systems and sources. Grievant's disdain for the regulations was underscored in his e-mail message to Mr. [Name 5] in which he characterizes regulations (presumably security) as "of dubious value." He suggests that a cost benefit analysis is appropriate in such circumstances, rather than strict adherence to security regulations. While we agree with the DCM that questioning the status quo may be productive and demonstrative of true leadership, such actions should be accompanied by sensitivity to the environment in which the work is being carried out and an appreciation that compliance with regulations (even those believed to be of dubious value) is necessary and persisting in railing at lawful authority is often needlessly disruptive. We have no doubt that Mr. [Grievant] was thoroughly committed to achieving the goals of his section and bringing excellence to his work product, but he clearly lacked perspective of the need to consider the demands on his colleagues and their mandates.

We find the EER statement to be fair, accurate and balanced based on the evidence presented.

4). Communications Skills: [Grievant] did not fully appreciate how front channel reporting on the issues he was dealing with operationally could also help advance mission goals; for example, a reporting cable on the development of the education sector and challenges facing U.S. institutions trying to set up programs here was produced under protest and months after it would have been most useful to AID and EAP programming decisions.

Grievant's principal complaint about the statement is the heavy workload that he and his section confronted during the period that the DCM had wanted him to draft the education cable. He was compelled to set priorities because of the myriad of tasks that he faced, and in his words "[t]he education cable did not rise to the top of the list of priorities not because it was unimportant but because it was the least pertinent of the tasks facing the [Section]." The cable was completed and issued, although not within the one month time period set by the DCM. The DCM obviously felt this was a higher priority than grievant indicated, and she complained that after the cable was drafted it was excessively long and copied from other documents. Two officers in grievant's section ended up cutting and editing while grievant was on leave, and by the time the cable went out in January, it was too late to inform certain programming decisions.

In response to grievant's assertion that the timing of the cable was not important since no other office had been waiting for the cable as a source of information about education, [Name 7] of the Political Section stated that cables are meant to inform policy decisions proactively. Grievant's busy workload was not sufficient reason for the delay, given the high priority of the subject matter. He agreed with the DCM that the cable needed extensive editing, and that it was left with grievant's subordinates to do much of the rewrite.

We do not find the EER statement to misstate the facts or contain falsely prejudicial language. The evidence suggests that the education cable was probably one of the most important reporting mechanisms assigned to grievant's section during the rating period. He admittedly gave it less priority than the DCM and others gave it and allowed his personal sense

of its importance to determine when the cable would be completed and the effort that would be spent on its creation. Even when he had finished a draft, there remained substantial editing and rewriting which was delegated to others. It is not disputed that the DCM “followed up” on her requests for the finished draft, but despite the importance of education as a mission policy, the grievant delayed its completion. His actions in delaying the cable and the circumstances surrounding the exercise can fairly be interpreted to mean that the cable was finally “produced under protest,” and we are persuaded that the cable may have lost some of its utility to other agencies because of its late arrival. We reject the grievant’s objection to this comment on the basis that it failed to recognize his heavy workload or the other pressing priorities facing his [Section]. We find nothing in the challenged statement was inaccurate or of a falsely prejudicial character.

The EER Review Panel

Finally, grievant asserts that the chair of the mission EER Review Panel signed off on the EER despite his knowledge that it was “false” because of fear that his own EER would suffer if he did not send the EER forward as approved by the Panel. The Panel Chair, [Name 8], denied that there was any pressure from the DCM or others during the review of grievant’s EER. He not only denied feeling any anxiety about his own EER, he also denied having heard other panel members express reservations or state that there was pressure from the Front Office. Other members of the Panel, although not implicated by grievant in their actions, submitted statements in support of Mr. [Name 8]’s position. We do not believe there is probative evidence to demonstrate that there was pressure or improper influence brought upon the panel or its chair during their deliberations on grievant’s EER. Grievant has not demonstrated by a preponderance of the evidence that there was any irregularity in this regard.

We would note that, overall, the EER was positive and supportive of grievant's performance and capability. While there was ample evidence of strains in the relationship between the DCM and grievant as alluded to by the Ambassador, the DCM gave what we consider to be a fair and balanced appraisal of his performance. She indicated that his organization of the Education Conference, for instance, "demonstrated great understanding of the challenges facing [Host Country]'s defunct education system." She further stated that grievant's

diplomacy was masterful when just days before the Ambassador's Education Conference – with 600 educators registered and the previously negotiated conference agenda and manual already at the printers – the Ministry of Education and Training . . . got cold feet and attempted to cancel the more critical (read valuable) sessions. *[Grievant]'s proposals to change the titles of some sessions and explanation of what the more controversial panels hoped to accomplish saved the day without requiring the Ambassador to engage more senior . . . officials.*" (Emphasis supplied.)

She further complimented his work in expanding the [Section], and his development of two "excellent databases." The Ambassador, in his review statement, commented that his interactions with grievant in a number of areas were handled with a high degree of professionalism and performance. In reference to the Education Conference, he termed it "a home run." He further stated that grievant's work on the Fulbright program was "exemplary" and ensures a "strong cohesive cadre of friends of America that we hope will benefit the U.S. and [Host Country] alike." We view the EER, with the exception as noted, as an accurate and balanced appraisal that fairly describes grievant's performance and potential with sufficient specificity.

V. DECISION

The grievance is denied except for the statement at paragraph III (2) above which shall be expunged from the disputed EER and any other records appearing in grievant's personnel

records; inasmuch as grievant did not comment on the statement to be expunged in the Rated Employee's statement (section X), grievant shall not have the option to comment on or revise any part of his statement in the EER.

For the Foreign Service Grievance Board:

Arthur A. Horowitz
Presiding Member

John Campbell
Member

Garber A. Davidson
Member