

**BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD**

In the Matter Between



Record of Proceedings  
FSGB No. 2010-040

And

March 30, 2011

Department of Commerce

**ORDER: MOTION TO COMPEL  
DISCOVERY**

EXCISED

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For the Foreign Service Grievance Board:

Presiding Member:

Elliot H. Shaller

Board Members:

Jeanne Schulz  
Nancy Serpa

Senior Advisor

Joseph Pastic

Representative for the Grievant:

*Pro se*

Representative for the Department:

Laura Carroll  
Employment and Labor Law Division  
Agency Representative

Employee Exclusive Representative:

American Foreign Service Association

## **ORDER: MOTION TO COMPEL DISCOVERY**

This Order addresses the Grievant's "Request for Motion to Compel Discovery," filed on February 16, 2011.

### **I. BACKGROUND**

Grievant, [REDACTED], [REDACTED], appeals certain alleged inadmissible comments in his 2008 and 2009 evaluations, and procedural errors committed in connection with their preparation. The evaluations at issue cover a period of time beginning on June 28, 2007 and ending on May 31, 2009. During this time grievant served as the Principal Commercial Officer at the U.S. Consulate in [REDACTED], [REDACTED].

In his statement of the grievance, grievant alleges the following:

Inadmissible comments for 2008 include an offending paragraph concerning the preparation of the Country Commercial Guide in early 2008. This paragraph is inadmissible and should be removed from the official record because it in no way represents what actually occurred. Specifically, my SCO left out the crucial fact that he verbally cleared, in person, the entire contents of a hardcopy printout copy of the subject document several days before claiming that the document was somehow incomplete. The SCO also reversed his clearance without using specific examples, at a time when he knew I was under crushing and stressful time constraints concerning another grievance, and without sufficient time for one person to make any corrections before the document deadline.

Inadmissible comments for 2009 include a reference to a telephone call I made to USDOC Headquarters in January 2009. The PER comments are unsubstantiated and constitute retaliation for a protected action, which is illegal. The result of the actions taken by the SCO, DSCO, and RD as a result of my protected actions have been to create an atmosphere of intimidation and to create a hostile working environment in which I cannot contact anyone in Washington without the risk and fear of retaliation.

Grievant initiated discovery on January 16, 2011. His discovery requests consist of six requests for documents, 21 interrogatories and nine Requests for Admissions. The agency submitted its responses to the requests on February 15, 2011. In its responses the

agency raised several general objections, including that grievant did not initiate discovery within the applicable deadline. It argued that under the Board's regulations providing 20 days from the date of the filing of the grievance to submit discovery requests, grievant was required to initiate the discovery by October 6, 2010 (20 days after he filed the grievance on September 16); however, he did not do so until January 26, 2011. In addition to its general objections, the agency lodged specific objections to each of the discovery requests. The agency claimed, among other objections, that each request sought information that was not relevant to this grievance or calculated to lead to the discovery of admissible evidence. The agency did produce documents in response to a number of the requests, subject to and without waiving its objections.

Grievant filed a motion to compel discovery on February 16, 2011. In the motion he contended that: the information was needed to demonstrate the agency's past and continuing hostility towards him and that the statements in the 2008 and 2009 evaluations that he objects to resulted from such hostility; the information would show the agency's "choreographed coordination" to harm him and failure to provide him due process; the agency was being recalcitrant, as demonstrated by fact that it objected to all of the discovery requests; the information requested was necessary to establish a timeline regarding the magnitude and frequency of the agency's attacks against him with regards to the issues raised in an earlier grievance (FSGB 2008-043)<sup>1</sup>; and there was no merit to the agency's timeliness argument because the deadline for submitting the discovery

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<sup>1</sup> In FSGB Case No. 2008-043, grievant appealed a 30-day suspension issued in June 2008. The Agency ultimately rescinded the suspension and provided grievant full remedial relief, and the grievance was dismissed as moot. Grievant has filed two other grievances, i.e., No. 2010-006 (which is still pending) and No. 2010-018 (which has been dismissed).

request was extended as a result of settlement negotiations and, further, the Board told him that the discovery deadline was January 27, 2011.

On February 28, 2011, the Agency filed its opposition to the motion to compel. The agency maintained and elaborated on its original objections to the discovery requests. On March 1, 2011, grievant sent an email to the Board in which he contended that the agency's opposition was filed more than ten days after he filed the motion and was therefore untimely.

## II. RULINGS ON TIMELINESS

The Board finds that neither the agency's objection based on the timeliness of grievant's initiation of discovery, nor the grievant's contention that the agency's opposition to the motion to compel was untimely, has merit. With respect to grievant's initiation of discovery, the Board's Senior Advisor told the grievant in an email dated January 13, 2011 that, because settlement negotiations ended on January 7, 2011, his deadline for filing any discovery request would be January 27, 2011. Grievant's discovery request, filed on January 16, 2011, was therefore timely.

With respect to grievant's contention that the agency filed its opposition to his motion to compel late, the agency received grievant's motion to compel on February 16, 2011. Under the Board's Motion Practice Guidelines, it had ten days to file any opposition. The tenth day was February 26. Because that day was a Saturday, the due date rolled over to the first succeeding business day, i.e., Monday, February 28.<sup>2</sup> Because the Board received the agency's opposition prior to 5 p.m. on February 28, it was timely.<sup>3</sup>

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<sup>2</sup> The Board's Motion Practice Guidelines on timelines states:

"Days" mean calendar days. In computing any period of time prescribed by these policies, the day of the act from which the designated period of time begins to run shall

### III. GENERAL DISCUSSION OF THE MERITS OF THE AGENCY'S OBJECTIONS

Before addressing each discovery request and the agency's objections thereto, some general comments applicable to virtually all of the requests are in order.

Under the Board's Policies and Procedures Regarding Discovery, grievant is entitled to discover non-privileged information that is relevant and material to the issues presented by the grievance. Relevant and material information is that which tends to prove or disprove a fact that may affect the disposition of a grievance. Discovery requests that are irrelevant, immaterial, too broad, unfocused, or unduly burdensome are objectionable. The grievance in this case focuses on alleged inadmissible comments in two of grievant's evaluations and relating to his performance in Japan, and improper procedures used in connection with those evaluations. With respect to the 2008 evaluation, grievant challenges certain comments regarding the preparation of the Country Commercial Guide in early 2008. With respect to the 2009 evaluation, he challenges the rating official's statement about his conduct during a telephone call that he placed to the agency's headquarters in January 2009.

Although the standard of relevance for discovery purposes is a relatively liberal one, the Board finds that most – but by no means all – of the agency's objections based on relevance have merit because the requests are unrelated to the comments in the 2008

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not be included. For example, if a party receives a motion on April 1<sup>st</sup>, begin counting the days from April 2<sup>nd</sup>. The last day of the period so computed shall be counted. If the due date falls on a Saturday, Sunday or Federal holiday, the next business day will be considered the due date. All submissions must be filed with the Board by 5:00 p.m. EST on the due date to be considered timely.

<sup>3</sup> It appears that the agency simultaneously, or almost simultaneously, e-mailed its opposition to the Board and to grievant. The Board received it before 5:00 p.m. on February 28. Because of the time difference between Washington, D.C. and ██████ a ██████, it was received by grievant the next day (██████ a time). But because the opposition was filed with the Board on February 28 before the close of business, it was timely.

and 2009 evaluations to which grievant objects, and are not reasonably calculated to lead to the discovery of admissible evidence. Instead, many of the requests relate to: time periods substantially outside those covered by the 2008 and 2009 evaluations; grievant's performance in other countries prior to the time he transferred to [REDACTED]; and personal information with no demonstrable relevance to the issues involved in this grievance and which in many instances involve individuals who had no input into the evaluations at issue. Generally, the agency's objections to discovery requests on the latter issues are, as more fully detailed below, sustained. But to the extent the discovery requests relate to the comments in the 2008 and 2009 evaluations at issue and grievant's performance during the time period covered by those evaluations, they are relevant and (absent some other objection being sustained) properly discoverable.

### **III. POSITIONS OF THE PARTIES AND THE BOARD'S RULINGS ON EACH OF THE DISCOVERY REQUESTS**

Set forth below is each of the discovery requests, a summary of the agency's response including objections, and the Board's ruling on the grievant's motion to compel a further response to that request.

#### **REQUEST FOR DOCUMENTS**

1. Provide copies of any documents, memoranda, email exchanges, etc. from all sources, but specifically the individuals named below . . . between June 1, 2007 and January 26, 2011 making any reference whatsoever to [grievant's] performance, activities, grievances, and/or communications with other USG officials and employees.<sup>4</sup>

The agency objects to this discovery request on the grounds (among others) of lack of relevance and that the request seeks documents from entities other than agency

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<sup>4</sup> Those mentioned include Izzy Hernandez, Nancy Kripner, Pamela Slutz, William Meade, Shirley Porter, Denise McGann, John Peters, Patrick Santillo, Gregory Loose, Roselle Lipsitz, Mr. Higgs, Bonnie Arthur, and Michelle O'Neill.

personnel which are not within its possession or control. Subject to and without waiving these objections, the agency produced to grievant documents numbered DOC 1 – DOC 122.

Ruling: The Board overrules the agency's objections. The requested documents about grievant's performance may reflect on whether the comments at issue in grievant's 2008 and 2009 evaluations were falsely prejudicial. Accordingly, to the extent there are documents created by any of the identified individuals within the time period referenced in the request and which relate to the grievant's performance during the 2008 and 2009 evaluation periods and which were not included in DOC 1 – DOC 122, they shall be produced.

2. Provide signed affidavits from all relevant U.S. government [officials] attesting to the subject, nature, length, substance and follow-up concerning any telephone discussions I had with USDOC headquarters staff in the month of January 2009. The names and titles of some of these individuals will have to be provided by the Agency.

The agency objects to this discovery request on grounds (among others) of lack of relevance and that it seeks to have the agency produce documents beyond its possession and control and to create new documents. Subject to and without waiving these objections, the agency has referred to documents numbered DOC 1 – DOC 122, produced in response to request number 1.

Ruling: The agency's objections are sustained to the extent this request seeks anything other than existing documents that are within its possession and control. The objections are otherwise overruled. Existing affidavits, if any, about telephone discussions grievant had with agency headquarters in January 2009 may be relevant to the comment in the 2009 evaluation regarding his conduct during one such conversation.

Any such existing documents within the agency's possession or control responsive to this request, and which are not included in DOC 1 – DOC 122, shall be produced.

3. Provide a summary of all existing Agency performance metrics of CS [REDACTED] and CS [REDACTED] for the years 2007, 2008, and 2009.

The agency objects to this discovery request on the ground (among others) of lack of relevance. Subject to and without waiving its objections, the agency produced to grievant documents numbered DOC 123 – DOC 147.

Ruling: The Board sustains the agency's objections with respect to documents reflecting the performance metrics of CS [REDACTED], as the issues in this grievance only involve comments about grievant's performance in [REDACTED]. The Board overrules the agency's objections to the extent this request seeks existing agency documents reflecting performance metrics of CS [REDACTED] for the years 2007, 2008 and 2009, as such documents may be relevant to the comments at issue in the 2008 and 2009 evaluations, covering a time period during which grievant worked in [REDACTED]. To the extent there are such documents in addition to documents included in DOC 123 – DOC 147, they shall be produced.

4. Please provide copies of all available documents relating to the resignation of former US & FCS Director General "Izzy" Hernandez; specifically, any documentation concerning his dates of service, date of resignation, last day in the office, and separation processing. The purpose of this request is to shed light on when this person, who was the deciding authority in my then-ongoing grievances, was employed by USDOC, when he ceased coming to the office, and why Washington headquarters staff could not say where he was, if he was a USDOC employee, or who was acting head of US&FCS.

The agency objects to this discovery request on the ground (among others) of lack of relevance.

Ruling: The Board sustains the agency's objection based on lack of relevance, particularly because Mr. Hernandez was neither the rating nor reviewing official for grievant's 2008 or 2009 evaluation and there is no evidence that he played any role with respect to such evaluations.

5. Provide copies of all emails sent by USDOC employees concerning the death of a family member of USDOC employee Nancy Kripner.  
(Note: there were many.)

The agency objects to this discovery request on the ground (among others) of lack of relevance.

Ruling: The Board sustains the agency's objection based on lack of relevance. Documents pertaining to the death of a family member of an agency employee are unrelated to the challenged portions of the evaluations at issue in this case.

6. Provide the written US&FCS email policy (to include the use of private messages, messages concerning personnel issues, and the use of "All CS People Everywhere" addressees) that was in effect in February 2009.

The agency objects to this discovery request on the ground (among others) of lack of relevance.

Ruling: The Board sustains the agency's objection based on lack of relevance. Documents pertaining to the agency's email policy have no bearing on the comments at issue in grievant's 2008 and 2009 evaluations.

## INTERROGATORIES

To [REDACTED] Deputy Senior Commercial Officer, [REDACTED] (former Regional Director for ANESA, ITA/US&FCS/OIO)

1. Explain why, after the MPR<sup>5</sup> in [REDACTED] had been formally concluded, you contacted State Department official(s) at the U.S. Embassy in [REDACTED] and solicited information from them about [REDACTED] (e.g., emails to the DCM in January 2007), without informing [REDACTED], who was the SCO at post. Please explain in detail your purpose, who asked you to do this, and their purpose.

The agency objects to this discovery request on the ground (among others) of lack of relevance.

Ruling: The Board overrules the agency's objection based on lack of relevance.

Mr. [REDACTED] was the rating official for grievant's 2009 evaluation which is at issue in this case. The extent to which Mr. [REDACTED] may have sought and/or received information about grievant in 2007, and his reasons for doing so, albeit outside the time period covered by grievant's 2008 and 2009 evaluations, might have a bearing on comments he made in grievant's 2009 evaluation. This request is at least reasonably calculated to lead to the discovery of admissible evidence. Accordingly, the agency shall respond to this interrogatory.

2. The MPR for [REDACTED] wrote that "The SCO<sup>6</sup> [REDACTED] is commended for maintaining up to date and well-organized personnel files" and that "SCO admin staff are to be commended for having excellent financial records and perfect oversight measures in place in all areas of financial management:
  - Only one prior year obligation exists due to DOS<sup>7</sup> lack of GSA<sup>8</sup> invoice. It will be kept open until DOS concurs with deobligation.

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<sup>5</sup> Management Program Review.

<sup>6</sup> SCO: Senior Commercial Officer.

<sup>7</sup> DOS: Department of State.

- Collections and deposits are handled extremely well.
- All purchase orders were seen to be well regulated and appropriate.
- Petty cash records and transactions are spotless.
- Travel documents are excellent and used in accordance with cost-saving measures.
- Gifts and Bequests were perfectly clean.
- Representation records are perfect.
- ICASS records, checks & balances, and oversight are perfectly in order and up-to-date.
- Vehicle records are spotless.

Please explain why you declined to provide [REDACTED] [REDACTED] with any commendation whatsoever for the above per the MPR recommendation, which describes administrative excellence with no comparison whatsoever at any post, let alone one similarly scrutinized.

The agency objects to this interrogatory on the ground (among others) of lack of relevance.

Ruling: The agency's objection based on lack of relevance is sustained. The information requested about the 2006 [REDACTED] MPR is unrelated to the subject of this grievance, i.e., the comments at issue in grievant's 2008 and 2009 evaluations, during which time the grievant worked in [REDACTED].

3. Describe in detail your meetings, discussions, and conclusions with other USDOC officials regarding plans for disciplinary action against the grievant in 2006 and 2007. (Note: from testimony from other sources, these meetings are known to have taken place.)

The agency objects to this interrogatory on the ground (among others) of lack of relevance.

Ruling: The agency's objection based on relevance is sustained. Information about communications regarding a plan for disciplinary action in 2006 and 2007, occurring substantially before the time period covered by grievant's 2008 and 2009

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<sup>8</sup> General Services Administration.

evaluations, is unrelated to the issues in this case, i.e., the comments in those evaluations that grievant claims were falsely prejudicial.

To **Pamela Slutz**, U.S. Department of State

4. You are known to have been in communication with then-SCO [REDACTED]'s supervisor, Mr. [REDACTED] in Washington DC regarding plans by Washington-based officials to take administrative action(s) against [REDACTED]. Please discuss the nature of your relationship with Mr. [REDACTED] (including previous assignments and social contacts), your role in assisting the Commerce Department in the actions it subsequently took, and your reasons for not ensuring that [REDACTED]'s performance appraisal as SCO was not completed in a timely manner.

The agency objects to this interrogatory on the ground (among others) of lack of relevance.

Ruling: The Board sustains the agency's objection based on lack of relevance.

Information pertaining to any communications about plans to take administrative action against grievant at some unspecified time is unrelated to the challenged portions of the evaluations at issue in this case.

**William Meade**, Office of Planning, ITA/US&F

5. Were you part of the MPR review team that conducted the [REDACTED] review when [REDACTED] [REDACTED] was serving as the SCO there?

The agency objects to this interrogatory on the ground (among others) of lack of relevance.

Ruling: The Board sustains the agency's objection based on lack of relevance.

Information pertaining to whether a particular agency official was on the review team that conducted the [REDACTED] MPR review in 2006 is unrelated to the comments in grievant's 2008 and 2009 evaluations at issue in this case, particularly considering that Mr. Meade

was not the rating or reviewing official for those evaluations and there is no evidence that he played any role in connection with them.

6. What were the dates of the MPR review?

The agency objects to this interrogatory on the ground (among others) of lack of relevance.

Ruling: The Board sustains the agency's objection based on lack of relevance. Information pertaining to the MPR review conducted while the grievant served in [REDACTED] is unrelated to the challenged portions of the evaluations at issue in this case, covering a time period during which he worked in [REDACTED].

7. What was your position on the MPR review team?

The agency objects to this interrogatory on the grounds (among others) of lack of relevance.

Ruling: The Board sustains the agency's objection based on lack of relevance. Information pertaining to Mr. Meade's position on the [REDACTED] MPR review team is unrelated to the comments at issue in the grievant's 2008 and 2009 evaluations.

8. Describe in detail meetings within ITA which occurred between June 1, 2006 and August 2007 (some of which were described to [REDACTED] [REDACTED] by Greg Grenier, who was present) in which US&FCS officials discussed [REDACTED] [REDACTED], and/or the [REDACTED] MPR, and/or the [REDACTED] MPR were discussed. Please identify who called the meetings, who chaired the meetings, whether any written notes of these meetings were made (and if so, provide them), the tone of the meetings, what was discussed, and what conclusions were reached.

The agency objects to this interrogatory on the ground (among others) of lack of relevance.

Ruling: The Board sustains the agency's objection based on lack of relevance. Information pertaining to meetings that occurred substantially before the time period covered by the evaluations at issue, and about MPRs conducted in [REDACTED] and/or in [REDACTED], is unrelated to the comments at issue in grievant's 2008 and 2009 evaluations, covering a time period during which he worked in Japan.

9. Describe in detail the nature of contents of emails, meetings, conversations, or discussions among or between State Department and/or US Department of Commerce officials staff in the months before, during, and after the MPR in [REDACTED] specifically discussing [REDACTED] and the intentions of State and/or Commerce officials?

The agency objects to this interrogatory on the ground (among others) that it seeks information that is not relevant to this grievance or reasonably calculated to lead to the discovery of admissible evidence.

Ruling: The Board sustains the agency's objection based on lack of relevance. Information pertaining to the requested communications occurring around the time of the MPR in [REDACTED] in 2006 is unrelated to the comments at issue in grievant's 2008 and 2009 evaluations, covering a time period during which he worked in Japan.

10. Explain why, after the MPR in [REDACTED] had been formally concluded, you continued to contact State Department official(s) at the U.S. Embassy in [REDACTED] and solicit information from them about [REDACTED] (e.g., emails and telephone calls to the Consul General in February 2007), without informing [REDACTED], who was the SCO at post. Please explain in detail your purpose, who asked or instructed you to do this, and their purpose.

The agency objects to this interrogatory on the ground (among others) of lack of relevance.

Ruling: The Board sustains the agency's objection based on lack of relevance. Information pertaining to Mr. Meade's contacts with the State Department officials at the U.S. Embassy in [REDACTED] in 2007 soon after the MPR review in [REDACTED] was completed is unrelated to the comments at issue in grievant's 2008 and 2009 evaluations, covering a time period during which he worked in Japan.

**Shirley Porter**, Chief, Workforce Management and Oversight, OFSHR,  
US&FCS

11. Do you recall a conversation with then-USDOC/ITA/US&FCS employee Denise McGann, which took place between June 2006 and September 2008, in which Ms. Gann [sic] mentioned to you that it seemed as though "many people were afraid of Nancy Kripner" and you responded "Yes, she [Ms. Kripner] has a long memory and she never forgets. She is going after an officer right now that crossed her a long time ago" or any words to that general effect?

The agency objects to this interrogatory on the ground (among others) of lack of relevance.

Ruling: The Board sustains the agency's objection based on lack of relevance. Because neither Ms. Kripner, Ms. Porter, nor Ms. McGann was the rating or reviewing official for the 2008 or 2009 evaluations at issue, and there is no evidence that any of these officials played any role in connection with them, information pertaining to the alleged conversation and comment is not relevant.

12. If yes, do you recall telling Ms. McGann "that she (Ms. Kripner) was in the process of destroying the individual's career or any words to that general effect?"

The agency objects to this interrogatory on the ground (among others) of lack of relevance.

Ruling: The Board sustains the agency's objection based on lack of relevance. Information pertaining to the alleged referenced conversation is unrelated to the comments at issue in grievant's 2008 and 2009 evaluations, particularly because neither Ms. Porter, Ms. McGann, nor Ms. Kripner was the rating or reviewing official for either of these evaluations and there is no evidence that any of these officials played any role with respect to them.

13. If yes, who was the individual to whom you were referring?

Ruling: The Board incorporates herein by reference the discussion and ruling set forth in answer to interrogatory number 12.

14. Describe the names, dates, and circumstances of any US&FCS employee, officer or otherwise, whom you have reason to believe has been retaliated against for having ever "crossed" a person working in OFSHR.

The agency objects to this interrogatory on grounds (among others) of lack of relevance and that it is overly broad and unduly burdensome in terms of scope and time period.

Ruling: The Board sustains the agency's objections. The requested information about any retaliation against an agency employee having "crossed" a person working in OFSHR is unrelated to the comments at issue in grievant's 2008 and 2009 evaluations, particularly because none of the OFSHR personnel served as the rating or reviewing official for either of these evaluations and there is no evidence that any them played any role in connection with them. The interrogatory is overbroad because, among other things, it seeks information about an overly broad group of employees (i.e., any "agency employee, officer or otherwise") and is not limited to any specific time period.

15. Explain why you sent an email to all US&FCS officers on January 27, 2009 regarding the passing of Ms. Kripner's husband; specifically, why you made an exception to written USG policy prohibiting wide-distribution emails of this nature.

The agency objects to this interrogatory on the ground (among others) of lack of relevance.

Ruling: The Board sustains the agency's objection. Information pertaining to the sending of an email about the death of Ms. Kripner's husband is unrelated to the comments at issue in grievant's 2008 and 2009 evaluations.

**Nancy Kripner**, Chief, OFSHR, US&FCS

16. Please describe all awards, commendations, bonuses, promotions or other recognition that have been received by [REDACTED], [REDACTED], and [REDACTED] in calendar years 2006, 2007, 2008, 2009, and 2010.

The agency objects to this interrogatory on the ground (among others) of lack of relevance.

Ruling: The Board sustains the agency's objection based on lack of relevance. Information pertaining to the receipt by the named officials of any of the types of recognition referenced is unrelated to the comments in grievant's 2008 and 2009 evaluations at issue in this case.

**Rochelle Lipsitz**, USDOC, current position unknown (formerly Deputy Director General and Acting Director General, US&FCS)

17. Please explain why, when [REDACTED] called the Director General's office in January 2009 after discussions with U.S. Senate staff, the US&FCS staff answering the telephone did not have any idea where Mr. Hernandez was, whether or not he was still the Director-General, who the Acting Director-General might be, or even whether or not Mr. Hernandez was still a USDOC employee.

The agency objects to this interrogatory on the ground (among others) of relevance.

Ruling: The agency's objection based on relevance is sustained. Although an issue in this grievance is whether the comments in grievant's 2009 evaluation about his conduct during his phone call with agency headquarters in January 2009 are falsely prejudicial, the reasons why headquarters' staff allegedly did not know certain information is unrelated to such conduct. Accordingly, this interrogatory seeks information that is not relevant.

18. Please explain why you sent an email to all US&FCS officers on January 27, 2009 regarding the passing of Ms. Kripner's husband; specifically, why you made an exception to written USG policy prohibiting wide-distribution emails of this nature.

Incorporated herein by reference is the discussion and ruling on interrogatory 15.

19. Explain why, although wide-distribution dissemination of email notices concerning family members of employees are prohibited by written USDOC policy, emails concerning Mr. Higgs were sent not only by you but also by Ms. Shirley Porter, Ms. Bonnie Arthur, and "ITA Announcement" (approved by the then-Acting Under Secretary of Commerce for International Trade, Michelle O'Neill).

The agency objects to this interrogatory on the ground (among others) of lack of relevance.

The Board sustains the agency's objection. Information pertaining to the reason why the referenced emails about family members of employees were sent is not relevant to the comments in grievant's 2008 and 2009 evaluations at issue in this case.

20. Explain in detail what substantive and direct conversations, discussions, email transactions, or other direct communications you have ever had with [REDACTED].

The agency objects to this interrogatory on grounds (among others) that it is overly broad and unduly burdensome both in scope and in terms of the time period covered, and lack of relevance.

Ruling: The Board sustains the agency's objections. Information pertaining to any and all oral and written communications Ms. Lipsitz ever had with grievant is overbroad because, among other things, it is not limited in time or scope. Further, the interrogatory is unrelated to the comments in grievant's 2008 and 2009 evaluations at issue in this case, particularly because Ms. Lipsitz did not serve as the rating or reviewing official for these evaluations and there is no evidence that she played any role in connection with them.

21. If you answered "none" above, please explain why you would sign a letter directing the actions described in your letter of February 22, 2010 without at least speaking with the employee first to obtain his/her explanations of any of the underlying issues?

The agency objects to this interrogatory on the ground (among others) of lack of relevance.

Ruling: The Board incorporates by reference its ruling on interrogatory number 20.

#### **REQUESTS FOR ADMISSIONS**

██████████ Senior Commercial Officer ██████████

1. Admit that, in spring 2008, you knew that ██████████ had been under continuous and severe stress since 2006 (he called you for advice from ██████████) concerning the MPRs in ██████████ and ██████████ i and actions taken by US&FCS Washington in their aftermath.

The agency objects to this request on grounds (among others) that it is vague and ambiguous and of lack of relevance. Subject to and without waiving these objections the

agency states that if an answer is deemed necessary, it denies the implied assertion that Mr. [REDACTED] was insensitive to any stress grievant was under during the time period covered by the 2008 and 2009 performance appraisals. The agency references the documents it produced in response to Document Request 1.

Ruling: The Board overrules the agency's objections. This request asks Mr. [REDACTED] to admit that he knew in the Spring of 2008 that grievant had been under continuous and severe stress. Mr. [REDACTED] was the reviewing official for grievant's 2008 evaluation, one of the two evaluations at issue in this case, and the evaluation period covered by that evaluation included the Spring of 2008. His knowledge at such time on whether grievant had been under continuous and severe stress may be relevant to whether the comments he wrote in the evaluation to which grievant objects were prejudicial; the request is at least reasonably calculated to lead to the discovery of admissible evidence. Further, although the term "continuing and severe stress" is not specifically defined, it is not so vague or ambiguous that the agency can not fairly be expected to admit or deny the statement, with qualifications as appropriate. The agency's denial of the assertion that Mr. [REDACTED] was insensitive to any stress grievant was under during the time period covered by the 2008 and 2009 is not responsive to the request. Accordingly, the agency must respond to this request for admission

2. Admit that, during an all-hands retreat in early 2008, [REDACTED] [REDACTED] presented you with a finalize [sic] hard-copy version of the Country Commercial Guide for 2008, that you had several days to review it, and that prior to the conclusion of the retreat you informed [REDACTED] [REDACTED] that "This looks fine."

The agency objects to this request on the ground (among others) of lack of relevance. Subject to and without waiving its objections, the agency states that to the

extent that an answer is deemed necessary, it denies grievant's assertion and refers to documents produced in response to Document Request 1.

Ruling: The agency's objection is overruled because it is related to the statement in grievant's 2008 evaluation to the effect that he was unable to complete the Country Commercial Guide (CCG). In any event, the agency has denied the request so its response is sufficient.

██████████ Deputy Senior Commercial Officer ██████████

3. Admit that the MPR for ██████████ wrote that "The SCO is commended for maintaining up to date and well-organized personnel files" and that "SCO and CSK admin staff are to be commended for having excellent financial records and perfect oversight measures in place in all areas of financial management.
- Only one prior year obligation exists due to DOS lack of GSA invoice. It will be kept open until DOS concurs with deobligation [sic].
  - Collections and deposits are handled extremely well.
  - All purchase orders were seen to be well regulated and appropriate
  - Petty cash records and transactions are spotless.
  - Travel documents are excellent and used in accordance with cost-saving measures.
  - Gifts & Bequests were perfectly clean.
  - Representation records are perfect.
  - Icas records, checks & balances, and oversight are exceptional.
  - T&A, Overtime and comp time are perfectly in order and up-to-date.
  - Vehicle records are spotless

The agency objects on the ground (among others) of lack of relevance. Subject to and without waiving its objections, the agency has responded to the request, denying it.

Ruling: The agency's objection is sustained. This request, concerning the MPR conducted in ██████████ in 2006, is unrelated to grievant's performance in ██████████ during the time period covered by the 2008 and 2009 evaluations in dispute.

4. Admit that [REDACTED] [REDACTED] in fact received [sic] never received any commendation in any tangible way (i.e., award, recommendation for award, recommendation for promotion, other) for the above.

The agency objects on the ground (among others) of lack of relevance. Subject to and without waiving and subject to its objections, the agency has responded to the request, denying it.

Ruling: The agency's objection based on relevance is sustained. This request, concerning the MPR conducted in [REDACTED] in 2006, is unrelated to grievant's performance in [REDACTED] during the time period covered by the 2008 and 2009 evaluations in dispute.

5. Admit that you were aware in 2006 and 2007 that it is a violation of administrative law to use MPR results as a basis for disciplinary action.

The agency objects to this request on the grounds (among others) of lack of relevance. Subject to and without waiving its objections, the agency has responded to the request, denying it.

The agency's objection based on lack of relevance is sustained. This request, concerning whether Mr. [REDACTED] was aware in 2006 and 2007 that it would be a violation of administrative law to use MPR results as a basis for disciplinary action, is unrelated to grievant's performance in [REDACTED] during the time period covered by the 2008 and 2009 evaluations and the comments at issue in those evaluations.

[REDACTED], Regional Director, East Asia/Pacific, US&FCS Washington

6. Please admit that, concerning an alleged telephone call conversation that [REDACTED] [REDACTED] made to US&FCS Washington, you harshly criticized [REDACTED] [REDACTED] **BEFORE** you solicited or heard [REDACTED] [REDACTED]'s version of events in any way, before you attempted to contact him in any way, and before you in fact were able to determine that [sic] fact [REDACTED] [REDACTED] was even involved in a telephone call.

The agency objects to this interrogatory on the ground (among others) of lack of relevance. Subject to and without waiving its objections, the agency denies the request admission and refers to documents it produced in response to Document Request number 1.

Ruling: The agency's objections are overruled. This request for admission, concerning whether Mr. [REDACTED] may have criticized grievant about that phone call may be relevant to grievant's conduct during such call and whether the statements about it in the 2009 evaluation are falsely prejudicial. In any event, the agency has denied the request so its response is sufficient.

**Rochelle Lipsitz, US&FCS**

7. Admit that, in order to preventing [sic] a hearing before the FSGB, the Agency formally agreed to rescind all disciplinary action against [REDACTED] [REDACTED] in the matters concerning the DG's letter of June 13, 2008 and agreed to issue him a performance award for 2006.

The agency objects to this interrogatory on the ground (among others) of lack of relevance. Subject to and without waiving these objections, the agency has denied the assertion.

Ruling: The agency's objection based on lack of relevance is sustained. This request about the rescission of disciplinary action is unrelated to the comments in the 2008 and 2009 evaluations at issue in this appeal.

8. Admit that the activities undertaken by OFSHR and US&FCS officials since June 2006 with regard to [REDACTED] [REDACTED] were unique in your experience.

The agency objects to this request as overly broad and burdensome, vague and ambiguous and irrelevant to the issues in this appeal. Subject to and without waiving these objections, the agency has denied the assertion.

Ruling: The agency's objections are sustained. The request is overbroad, vague and ambiguous (particularly in asking the agency to admit that certain activities were "unique") and unrelated to the comments at issue in grievant's 2008 and 2009 evaluations.

9. Admit that you were in fact relieved of your duties in US&FCS in fall of 2010.

The agency objects to this request on the ground (among others) of lack of relevance.

Ruling: The agency's objection based on relevance is sustained. Whether Ms. Lipsitz may have been relieved of her duties in 2010 is not relevant to the comments in the 2008 and 2009 evaluations at issue in this appeal, particularly because she was not the rating or reviewing official for either evaluation and there is no evidence that she played any role with respect to these evaluations.

**William Meade**, Office of Planning, ITA/US&FCS

10. [sic] Admit that you were aware in 2006 and 2007 that it is a violation of administrative law to use the MPR results as a basis for disciplinary action.

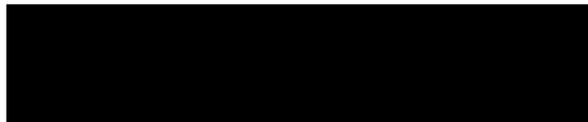
The agency objects to this request on the ground (among others) of lack of relevance. Subject to and without waiving its objections, the agency has responded to the request, denying it.

Ruling: The agency's objection based on lack relevance is sustained. This request, concerning whether Mr. Meade was aware in 2006 and 2007 that it would be a violation of administrative law to use MPR results as a basis for disciplinary action, is unrelated to grievant's performance in [REDACTED] during the time period covered by the 2008 and 2009 evaluations and the comments in those evaluations at issue.

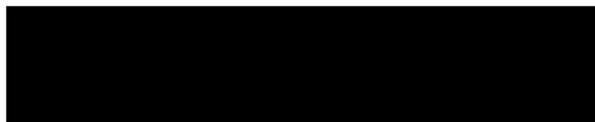
#### **IV. ORDER**

Grievant's Motion to Compel is granted in part and denied in part. The agency is directed to file within 30 calendar days of the receipt of this Order further response to the discovery requests consistent with the above rulings on the specific requests.

For the Foreign Service Grievance Board:



Elliot H. Shaller  
Presiding Member



Jeanne Schulz  
Member



Nancy M. Serpa  
Member