

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between


Grievant

and

Department of State

Record of Proceedings
FSGB Case No. 2011-034

October 25, 2011

**ORDER RE: MOTION TO
COMPEL**

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

Elliot H. Shaller

Board Members:

Nancy M. Serpa
Alfred O. Haynes

Special Assistant:

Jill E. Perry

Representative for the Grievant:

Pro Se

Representative for the Department:

Melinda P. Chandler
Director, Grievance Staff

Employee Exclusive Representative:

American Foreign Service Assoc.

ORDER: MOTION TO COMPEL

I. The Issue:

This Order addresses grievant's Motion to Compel Responses to his August 15, 2011 First Discovery Requests.

II. Background:

The grievant, [REDACTED] a member of the Foreign Service with the Department of State (Department), filed a grievance with the Department on November 24, 2010. He charges that a Performance Memorandum dated March 2, 2009, written about him by the Ambassador and placed in his Official Performance Folder (OPF), contained unsubstantiated, inaccurate and unjust criticisms of his performance.

On December 3, 2010, grievant was informed that he had been low ranked by the 2010 Selection Board. On January 3, 2011, grievant supplemented his original grievance, adding a claim that his low-ranking was the result of the inclusion of the aggrieved flawed Performance Memorandum that had been placed in his OPF. The Department denied his grievance by letter dated May 24, 2011, and he appealed that decision to this Board on July 25, 2011.

On August 15, 2011, grievant filed his First Discovery Request, seeking four sets of documents and responses to three Interrogatories. On September 6, the Department responded to grievant's request and supplemented that response on September 13. The Department objected to all of grievant's discovery requests.

On September 23, grievant filed his Motion to Compel the Discovery of the following documents and Interrogatories:

Document No. 2: All MED reports, with appropriate redactions, from [REDACTED], between 2001 and 2011, relating to difficulties at post and/or the negative effects of post conditions on FSO staff.

Document No. 3: Provide any complaints to OIG or HR made against Ambassador [REDACTED] between 2001 and 2011.

Interrogatory No. 1: State whether the Department has difficulty finding individuals who wish to serve in [REDACTED]. If yes, please provide the reasons.

Interrogatory No. 2: Without divulging personally identifiable information, please indicate the personnel problems HR has experienced with individuals in [REDACTED] between 2001 and 2011.

On October 3, the Department filed its opposition to grievant's Motion to Compel Discovery on the grounds that the information grievant was seeking was irrelevant, immaterial, overly broad and burdensome and not relevant to the issues raised in his grievance.

On October 19, the Panel held a telephonic Status Conference with the parties for the purpose of clarifying certain parts of grievant's request for Interrogatory No. 2. At the outset of the Conference the Panel informed the parties that it had decided to deny grievant's request for Documents No. 2 and No. 3 and grievant's request for Interrogatory No. 1 because, among other things, these discovery requests were overbroad and sought documents and information that were not relevant to the grievance.

Regarding Interrogatory No. 2, the Panel asked grievant to clarify the request for information regarding "personnel problems HR had experienced with individuals in [REDACTED] [REDACTED]" Grievant explained that he was seeking documentation reflecting difficulties experienced by American personnel serving at [REDACTED]. Because the panel viewed the interrogatory (as clarified) as potentially relevant, it indicated that it would grant the Motion to Compel in part. Specifically, it directed the Department to produce to grievant existing documents in its possession and control (which could be located based on a reasonably diligent search) reflecting difficulties experienced by American personnel serving in

[REDACTED], such as Post Differential Questionnaires submitted to the Allowances Staff, for the past five (5) years.

III. Order:

Grievant's Motion to Compel Discovery for Documents No. 2 and No. 3 and Interrogatory No. 1 are denied.

Grievant's Motion to Compel Discovery regarding Interrogatory No. 2 is granted in part and denied in part. The Department is directed to provide grievant with existing documents in its possession and control that may address the difficulties of service by American staff during the past five years (such as Post Differential Questionnaires), covering [REDACTED]

[REDACTED]

For the Foreign Service Grievance Board:



Elliot H. Shaller
Presiding Member



Nancy M. Serpa
Member



Alfred O. Haynes
Member