

**BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD**

In the Matter Between



FSGB Case No. 2015-016

and

April 11, 2016

Department of State

**DECISION**

EXCISED

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For the Foreign Service Grievance Board:

Presiding Member:

Susan R. Winfield

Board Members:

J. Robert Manzanares

Harlan Rosacker

Special Assistant

Joseph J. Pastic

Representative for the Grievant:

Andrew Large,  
American Foreign Service Association

Representative for the Department:

Laurie Younger, HR/G

Employee Exclusive Representative:

American Foreign Service Association

## OVERVIEW

**Held:** Grievant failed to prove by a preponderance of the evidence that either his redacted 2012 or his 2013 Employee Evaluation Report (EER) contained statements that were falsely prejudicial, inaccurate, or biased, or that the redacted 2014 Low Ranking Statement (LRS) should be expunged. Grievant's request to rescind the Department's referral of his Official Personnel File (OPF) to the Performance Standards Board (PSB) for consideration of selection out of the Foreign Service was denied.

## CASE SUMMARY

Grievant served as the Public Affairs Officer (PAO) section head at Embassy [REDACTED] from July 2011 through June 2013. He challenged his 2012 and 2013 EERs, claiming they were falsely prejudicial, inaccurate and biased. He also claimed that his performance was impacted by an environment at Embassy [REDACTED] that he characterized as one of "unpredictable, extreme, savage, targeted and purposeless workplace bullying" led by the Ambassador. He also claimed that the Deputy Chief of Mission (DCM) was bullied and intimidated by the Ambassador into writing EERs that minimized his achievements.

Grievant cites two Office of Inspector General (OIG) reports (dated October 2010 and March 2012) that were critical of the Ambassador's leadership and management skills as evidence supporting the claim that he endured a difficult and abusive relationship at the hands of the Ambassador. The Board found that to the extent that the Ambassador impacted grievant's 2012 EER as his reviewing officer, the Department in its agency-level decision rendered part of this claim moot when it ordered that the reviewer statement be redacted from the 2012 EER. Because there was no evidence presented that the Ambassador participated in grievant's performance evaluation in 2013 because she had departed post before the 2013 EER drafting began, the Board found that the relationship between the Ambassador and grievant had no bearing on the 2013 EER.

The Board credited the DCM's statements that he was not intimidated, influenced or pressured by the Ambassador in writing the rater statements in grievant's 2012 and 2013 EERs that included some criticisms of his performance. The Board also found that grievant was adequately counseled by the DCM. The record reveals multiple reports documenting meetings between DCM, grievant and a note taker in both 2012 and 2013 where grievant was counseled about his performance deficiencies and given specific suggestions on how to improve.

The grievance appeal was denied.

## DECISION

### I. THE GRIEVANCE

██████████ (grievant), an FS-01 Public Diplomacy officer in the Department of State (the Department, agency), appeals the Department's denial of his grievance in which he claims that the Ambassador at U.S. Embassy ██████████ created an environment that "was characterized by unpredictable, extreme, savage, targeted and purposeless workplace bullying." He asserts that the Ambassador undermined his performance as Public Affairs Officer (PAO) by bullying and marginalizing him and dealing directly with his staff. He also claims that the Ambassador pressured and intimidated the Deputy Chief of Mission (DCM), leading the DCM to prepare inaccurate, falsely prejudicial and biased Employee Evaluation Reports (EERs) in both 2012 and 2013. Grievant argues that the biased EERs directly caused him to receive Low Ranking Statements (LRSs) in both 2013 and 2014. Grievant requested the following relief:

1. The removal in their entirety of the 2012 and 2013 EERs;
2. Removal of the 2013 and 2014 LRSs;<sup>1</sup>
3. A two-year extension of his time in class and time in service limitations;
4. A two-year extension of his window for promotion into the Senior Foreign Service;
5. If he is promoted, that the promotion be made retroactive to 2012;
6. Rescission of the referral to the Performance Standards Board (PSB);
7. Attorney's fees, if warranted;<sup>2</sup> and
8. All other relief deemed just and proper.

### II. BACKGROUND

Central to this grievance appeal is a repeated assertion by ██████████, grievant, that his performance was impacted by a difficult and abusive relationship at the hands of the Ambassador who assumed her post in July 2009. Grievant cites an Office of the Inspector General (OIG) report, dated October 2010, that criticized the Ambassador's leadership and

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<sup>1</sup> In its decision letter, the Department agreed to remove the entire reviewer's statement in the 2012 EER and the 2013 LRS.

<sup>2</sup> There is no evidence presented that grievant is an attorney or has retained the services of an attorney during the initial grievance or the appeal.

management skills, noting that several senior managers found her temperament “sharp and unpredictable.” Grievant also cites a follow-up OIG review in March 2012 that found that the Ambassador had not improved certain of her deficiencies.

Grievant assumed his position as PAO in July 2011 and served as the chief of the Embassy’s Public Affairs Section (PAS). According to grievant, the Ambassador quickly found his performance wanting and made her dissatisfaction clear to him.<sup>3</sup> In grievant’s EER for the rating period ending April 15, 2012, his rating officer, the DCM, cited some performance deficiencies but rated grievant’s overall performance “satisfactory or better.” The Ambassador’s review was highly critical. Grievant received an LRS in 2013 based on the 2012 EER.

In October 2012, the DCM counseled grievant on performance deficiencies in the areas of leadership, strategic thinking and organizational skills. On November 14, 2012, the DCM informed grievant that his staff had complained about his leadership, including that he was pitting them against the Ambassador. The DCM warned that if this behavior continued, grievant’s assignment would be curtailed involuntarily. In subsequent meetings and counseling sessions on February 14, 2013 and 26, 2013, the DCM repeatedly warned grievant that his performance was not improving and that his assignment might be curtailed.

In grievant’s next EER, for the year ending April 15, 2013, the DCM found that grievant’s overall performance was not “satisfactory or better.” Because the Ambassador had departed post two months earlier, there was no reviewer’s statement. Grievant voluntarily curtailed his assignment in June 2013. Grievant received a second LRS in 2014 based on his 2013 EER.

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<sup>3</sup> It is unclear precisely how much, or how soon, the Ambassador shared her dissatisfaction with grievant’s performance with the DCM; however, the record reveals that she certainly shared some concerns with him.

Grievant submitted his grievance to the Department on June 9, 2014, supplementing it on October 31 and December 3, 2014. On March 17, 2015, the Department issued a decision finding that although grievant failed to prove that the statements by the rating official in his 2012 and 2013 EERs were inaccurate or falsely prejudicial, the 2012 statement by the reviewing official, the Ambassador, did not present a balanced appraisal of his performance. The agency ordered that the Ambassador's statement be removed from the 2012 EER; that a redacted copy be placed in grievant's Official Performance Folder (OPF); that the 2013 Low Ranking Statement (LRS) be removed from the Board Report maintained by the Department because of its heavy reliance on the redacted reviewer's statement; and that a sentence in the 2014 LRS that referenced the 2012 EER reviewer statement should be redacted for the same reason.

On May 18, 2015, grievant appealed the Department's decision to the Foreign Service Grievance Board (FSGB, Board). He filed a supplemental submission on October 23, to which the Department responded on November 23, followed by a rebuttal from grievant filed on December 22, 2015. The record of proceedings (ROP) was closed on December 23, 2015. On February 26, 2016, grievant filed a request to reopen the record in order to submit additional information that he believes bears on the instant appeal decision. On March 7, 2016, the Department filed an opposition to the request to reopen the record and on March 8, 2016, grievant filed a reply.

### **III. POSITIONS OF THE PARTIES AND FINDINGS BY THE BOARD**

Because there are so many different claims and arguments about each, we report the parties' positions vis-à-vis each claim immediately followed by the Board's discussion and findings.

## A. BULLYING BY AMBASSADOR

### **Grievant**

Grievant asserts that the Department had overwhelming evidence that his workplace environment under the Ambassador was both subjectively and objectively “unpredictable, extreme, savage, targeted, deeply personal, and frequently devoid of any conceivable positive purpose.” He contends that, “It is inconceivable that such an environment would not have a cumulative, deleterious effect on staff morale.” He further claims that both the Department and the DCM ignored proof of the Ambassador’s misconduct by arguing that her behavior had no bearing on his ability to perform his job.

Grievant claims that he was denied many opportunities to perform his work functions. For example, he cites the fact that the Ambassador ordered him to leave a meeting to discuss speechwriting and prohibited his participation in senior staff and country team meetings for many months until she left post, even when she was out of the country, which prevented him from performing some of his assigned duties. Grievant asserts that two OIG inspection reports described the Embassy’s front office treatment of post employees as harsh and unpredictable and said that post employees suffered from a “flat line type of management” that “weakened the chain of command and disempowered section leaders.” Grievant claims that both reports are evidence that the environment was one of “purposeless, intense workplace bullying” that undermined his ability to perform and, more importantly, intimidated his rater into minimizing his accomplishments in his 2012 and 2013 EERs.

### **Department**

The Department claims that the issue of bullying by the Ambassador is irrelevant to the issues presented in this grievance, given that the agency removed the Ambassador’s reviewer

statement from grievant's 2012 EER and all references to it from both the 2013 and 2014 LRSs. Moreover, the Department asserts that since the Ambassador had left post before the 2013 EER was drafted, she did not have any influence over the statements made by the DCM in that EER.

The agency contends that what is at issue on appeal is the validity of the DCM's rater statements in the redacted 2012 and 2013 EERs. The Department argues that it properly found that both rater statements reflect a fair and balanced assessment of grievant's performance and that grievant has presented no credible evidence to support the claim that the DCM was intimidated by the Ambassador, or that her alleged bullying affected grievant's ability to perform.

The agency also argues that comments from several colleagues at post indicate that grievant's shortcomings resulted from his own deficiencies and not because of bullying or intimidation by the Ambassador. In response to grievant's claims that the comments of his coworkers are a reflection of the Ambassador's intimidation of them and the "culture of fear" that existed at post, the Department reiterates that the shortcomings identified in the 2012 and 2013 EERs by the rater were the result of grievant's weak performance and not because of bullying or intimidation by the Ambassador.

### **Discussion and Findings**

Because this case does not involve disciplinary action, grievant has the burden of establishing by a preponderance of the evidence that the grievance is meritorious. 22 CFR 905.1(a). The recurring theme that grievant argues in this case is that the culture at the Embassy was one of intense workplace bullying perpetuated by an Ambassador who was biased and hostile towards him, the DCM and others at post. Grievant claims that the Ambassador bullied and intimidated his rater, the DCM, who therefore wrote several falsely prejudicial statements in

his 2012 and 2013 EERs. He also claims that the Ambassador's bullying undermined his ability to perform adequately, while at the same time arguing that the criticisms of his performance were almost entirely inaccurate and falsely prejudicial because he performed very well most of the time.

The Ambassador's reviewer statement in grievant's 2012 EER was expunged by the Department in its agency decision, along with the entire 2013 LRS and all references to the reviewer statement in the 2014 LRS. Thus, all of the Ambassador's statements about grievant were removed from his performance file. In addition, because the Ambassador left post in February 2013, before the 2013 EER was drafted by the DCM, there is no evidence that she reviewed or had any direct input into the content of the 2013 EER. We discuss below grievant's claims that the Ambassador intimidated the DCM into drafting falsely prejudicial statements in the 2012 and 2013 EERs.

As for the impact of the Ambassador's alleged bullying on grievant's performance, we note that with respect to every criticism in both EERs, grievant insists that he had no performance deficiencies at all. For example, he states:

I was livening up "all embassy" staff meetings; I quickly engaged in contact development with senior level contacts .... I developed an impressive professional/social network, including quickly becoming a leader in many important contact communities.

and

Many of the allegations [or performance failures] come across at first blush as hitting the mark, including those supported by colleagues. However, almost all, if not all, fall apart under even casual scrutiny .... I brought to HR specific documented rebuttals to the DCM's claims of my poor performance.

and

I certainly do not believe that there is a single instance of egregiously poor

performance that would warrant the career ending tenor intentionally used by the DCM for the 2013 EER.

We conclude that grievant does not persuasively argue that he had no performance deficiencies while claiming that the Ambassador undermined his performance with her bullying tactics. We conclude that grievant does not establish that the Ambassador's behavior adversely affected his performance or influenced the negative ratings that he received.

**B. AMBASSADOR'S INTIMIDATION OF DCM, DCM'S BIAS, IMPACT ON GRIEVANT'S PERFORMANCE**

**Grievant**

Grievant claims that nearly every day during his two years at post, the Ambassador screamed at, ridiculed and humiliated the DCM and other American and [REDACTED] employees of the Embassy. Grievant claims that he was a "favorite target of her abuse," but contends that by the DCM's own admission, the Ambassador exerted pressure on him and intimidated him as well. He argues that the DCM was bullied into casting his accomplishments and contributions in an inaccurate and unfavorable light.

**Department**

The Department argues that grievant has not provided any credible evidence to support his claim that the Ambassador influenced, or in any way pressured the DCM to write a negative EER in 2012 or 2013, either before or after she left post.<sup>4</sup> The Department asserts that it carefully reviewed the rater's comments and found that they were all fair, accurate, and balanced.

The agency also states that when he was interviewed by the Department, the DCM denied that the Ambassador asked him to minimize grievant's accomplishments, or pressured him to write a negative EER. He asserted that grievant, rather than reflecting on his shortcomings,

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<sup>4</sup> The Ambassador departed post in February 2013, prior to the Spring time period for drafting the 2013 EERs.

increasingly blamed his performance problems on his relationship with the Ambassador. During a July 23, 2012 counseling session, the DCM told grievant directly that the Ambassador's views had no bearing on his evaluation of grievant's performance and that the 2012 rating officer's statement would have been the same regardless of the Ambassador's perspective. The DCM stressed that it was in grievant's hands to improve his performance, and if he did, he would write a positive appraisal. The Department states that the DCM's ratings cited both strengths and weaknesses and in the 2012 rating, he cited accomplishments that the Ambassador had not mentioned.

The Department cites a comment made by grievant's subordinate, APAO [REDACTED], in support of its assertion that the DCM was a fair rater and was not intimidated or bullied by the Ambassador to write a negative EER for grievant. Mr. [REDACTED] stated:

[The DCM] was a fair rater and worked very hard with [grievant]. He came down, he set goals, he did all he possibly could to help [grievant.] He tried to separate [him] from the Ambassador. He told [him] "let's focus on you and what you can do."

The Department maintains that grievant did not meet his burden of proving that intimidation by the Ambassador caused the DCM to unfairly review him because grievant failed to provide specific incidents or details to substantiate this claim. Further, the Department states, grievant's *ad hominem* attacks about the DCM's failure to host representational events, attend Embassy outreach events, or speak [REDACTED] in front of the Ambassador were of no probative value on the question whether the DCM wrote a fair and impartial review of grievant's performance.

### **Discussion and Findings**

Grievant offers no more than uncorroborated, repetitive assertions that the Ambassador intimidated the DCM, without any evidence to support these assertions and without proof that

this caused the DCM to write falsely prejudicial EER evaluations. The DCM credibly denied that the Ambassador did or said anything to cause him to minimize grievant's accomplishments or to write a negative EER in either 2012 or 2013. When grievant accused the DCM of giving him a "bad EER at the Ambassador's bidding" during the drafting period for the 2012 EER, the DCM wrote in a contemporaneous memorandum, "I reiterated [to grievant] that his relationship with the Ambassador had no bearing on my evaluation of his performance and that my evaluation would be the same regardless of the Ambassador's perspective."

On March 8, 2013, the DCM is reported to have met with grievant, insisting that he should decide whether to curtail voluntarily or involuntarily because of his failure to make sufficient improvements in his performance deficiencies. The DCM reminded grievant in that meeting that he had counseled him on his poor performance in October, November and December 2012 and January 2013. When grievant stated that he believed that the curtailment request was due to the Ambassador's "mismanagement and poor leadership," the DCM again reminded him that "performance is performance" and he judged grievant's performance to be weak in several key areas.

Each of the counseling statements that grievant appends to his Supplemental Submission establish that the DCM repeatedly expressed to grievant his concerns about grievant's perceived performance challenges and denied that the Ambassador influenced those concerns. The Board concludes that there is no credible evidence to support grievant's claim that his rater, the DCM, was intimidated by the Ambassador, or was pressured to write a negative EER for 2012 or 2013. We note that grievant claims that the DCM frequently told him that they just had to "survive" the Ambassador's tour because she was a "bully" (an assertion that the DCM denies). Even if we accept this as true, however, there is no reason to believe that the DCM would write a negative

EER for grievant in 2013, after the bullying Ambassador left post. We also find that the DCM noted many positive contributions by grievant in both challenged EERs, which undermines grievant's argument that the Ambassador bullied the DCM into writing negative comments.

### C. RATING STATEMENT IN 2012 EER

Grievant claims that the 2012 evaluation that he received from the DCM was deliberately inaccurate because of the hostile and biased animus of the Ambassador. Grievant argues that his 2012 evaluation fails to mention his notable accomplishments and fails to explain the significance of this successful performance that would ordinarily be included in an evaluation. He avers that the evaluation was the result of the DCM's acknowledged concern that writing overly positive descriptions of his contributions and accomplishments would upset the Ambassador.

Grievant specifically challenges several of his rater's comments as follows:

#### 1. Communication Skills, Press Briefings

His morning press briefings to the Ambassador and Senior Staff, however, have been uneven in quality. Many times he appears to be reading a summary prepared by his staff rather than having internalized the news of the day himself.

### **Grievant**

Grievant contends that this criticism may have been accurate for some of his briefings, but it does not describe a general performance deficiency. He claims that his performance at these meetings was consistent with the acceptable performance of his then current colleagues. He also claims that the Ambassador's and DCM's biases against him were the true reasons why he was scrutinized and criticized. Grievant states: "I remain confident that I can brief well, and would welcome the opportunity to recreate a briefing situation to FSG staff."

## **Department**

The Department states that grievant was told by the DCM, in multiple documented counseling sessions, that he needed to improve his presentation skills, specifically to organize his thoughts ahead of time and present them succinctly. In response to questions from the Grievance Staff (HR/G), several post section chiefs who regularly attended senior staff meetings confirmed the DCM's opinion, agreeing that grievant's briefings were substandard, "disjointed and difficult to follow," and "not always accurate, relevant, or in terms the audience could understand."

## **Discussion and Findings**

We begin with a recognition that there was a strained relationship between grievant and his rating officer. When such a situation exists, the Board must conduct a careful assessment to determine whether that strain tainted the rater's objectivity. *See*, FSGB Case No. 2005-017 (October 28, 2005). As we have repeatedly stated, the fact alone of a difficult relationship between employee and rater does not establish that challenged comments written by the rater are inaccurate or falsely prejudicial. *Id.* The question for this Board, then, is: Given the strained relationship between the DCM and grievant, were the rater's challenged comments in either the 2012 or 2013 EER a fair, objective and balanced appraisal of grievant's performance, or were they tainted by the strain? We have carefully examined each criticism in order to determine also whether grievant received notice early enough and with sufficient clarity so that he could improve.<sup>5</sup>

With respect to the criticism of grievant's press briefings, the DCM's criticism is corroborated by other section chiefs who witnessed his performance in the senior staff meetings.

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<sup>5</sup> Despite grievant's arguments that the Board should decide whether his ideas were meritorious and whether his performance was satisfactory or better, the Board's role is not to determine whether grievant had good or bad ideas – i.e., whether he was right and the DCM and/or the Ambassador were wrong. Instead, we look to whether the DCM identified areas of performance weaknesses during the rating period, gave grievant concrete suggestions on how to improve, and provided a reasonable time in which he could do so.

The Political Officer reported to the HR/G staff that grievant's press briefings were "not on par with other officers, disjointed, difficult to follow, not prepared adequately and nervous. ... He was usually not well prepared. ... He was not a master of his portfolio." The Pol/Econ Counselor wrote that grievant's press briefings were "not always accurate, relevant, or in terms the audience could understand." The DCM wrote during the grievance appeal: "He was not able to brief succinctly, and you couldn't understand his briefings." This exactly paralleled a statement he made during a counseling session with grievant on August 16, 2012: "Although his morning press briefings have improved somewhat – he seems to have prepared himself better – he still has a rambling style of speaking which makes it difficult to follow him." Based on the evidence in the record, the Board finds that this criticism was a fair and accurate assessment of grievant's performance, untainted by any purported bias.

1. Written Work

His written work also often lacks precision; for example, he provided me a draft public diplomacy strategy prior to a country team offsite that I felt was too much "stream of consciousness."

## **Grievant**

Grievant limits his remarks to the format of his draft strategy. He argues that the DCM had not suggested a format for drafting the strategy document, despite his requests. He argues that he "reasonably inferred" that the Embassy MSRP (Mission Strategic Resource Plan) was an appropriate example to draw on as a model and held a planning retreat at his apartment with his staff to brainstorm what to include in the document. He claims that his document was "equal or superior" in precision to similar documents.

## **Department**

The Department asserted that grievant should have known the MSRP was not an appropriate model. According to the agency, grievant was unable to provide a brief statement of vision and objectives that the DCM sought. His submissions were unclear and lacked precision when compared to those of other section chiefs.

## **Discussion and Findings**

We note that grievant admits that when he submitted the strategy document mentioned in this criticism, the DCM read it and remarked: “This is a good first effort. It reads a bit like a stream of [consciousness].” Notwithstanding this critique, grievant reports: “[The DCM] made no further comment. I then used [the document] as the basis for my presentation at the ambassador’s all embassy section head planning meeting the next week.” Thus, grievant concedes that his rater contemporaneously informed him that he was dissatisfied with this writing, yet he submitted it to the Ambassador without further edits.

In addition, the Grievance Staff reported other documented examples where grievant’s writing lacked precision. One Pol/Econ Officer told HR/G that there were significant typographical errors and omissions in the PAS contribution to a briefing book for the incoming Ambassador. She stated that she asked grievant to review and edit it before forwarding it to the front office; however, grievant did no further work to revise it. The DCM also reported that when he requested talking points in preparation for a speaking engagement, grievant provided him with a collection of quotes and speeches given by a U.S. government representative, rather than speaking points tailored for the event.

The Board finds that these comments and grievant's response support the criticism about his writing skills and we, therefore, conclude that grievant has not met his burden of proving by a preponderance of the evidence that this criticism is falsely prejudicial or inaccurate.

## 2. Intellectual Skills and Judgment

Usually, his sense of whether to engage the press on a particular issue is good, however, on a few occasions he has not carefully analyzed potential negative public reaction. When U.S. Special Forces and the FBI rescued a [REDACTED] hostage in Somalia, for example, Bob pressed the Ambassador to be present at the airport to greet the returning [REDACTED] something that would not have been acceptable by [REDACTED] standards.

### Grievant

Grievant claims that this criticism is inaccurate and proves that a "mere discussion of possibilities" was not tolerated in the Embassy's culture of severe workplace bullying. He points out that the rescue of the [REDACTED] hostage by American forces was a major news story and was acclaimed throughout [REDACTED] society. He insisted that the Ambassador's presence at the return of the hostage would have served the Embassy's number one MSRP objective – maintenance of the strategic alliance. Grievant asserts that the DCM offered no explanation as to why it was unacceptable by the country's standards.

### Department

The Department argues that the Ambassador's participation in this event without an invitation from the [REDACTED] government would have been awkward at best and inappropriate at worst. In fact, as the DCM predicted, the [REDACTED] government did not send its own representative to greet the returning hostage, nor did it invite the Ambassador to be present. Furthermore, the agency contends that grievant misrepresents the facts. The criticism did not state that grievant showed poor judgment by making the suggestion; rather that he "had not carefully analyzed

potential negative public reaction.” The Department argues that this was a fair and balanced assessment of a performance weakness.

### **Discussion and Findings**

The HR/G staff spoke to the Pol/Econ Counselors, who confirmed that grievant’s idea reflected poor judgment. He stated it would have been distasteful for the Ambassador to show up at the airport, making the rescue look like a win for America, without first being invited by the [REDACTED] “This was about a [REDACTED] returning to [REDACTED] soil. It wasn’t about America.” The DCM reported to the HR/G staff that grievant raised this suggestion not just once, but repeatedly over 4 to 5 days. He stated: “It was well beyond a mere creative suggestion. [Grievant] is stubborn at times and egocentric. He refused to see others [sic] viewpoints. He claimed that his staff agreed, but others felt it was not a good idea.” In fact, grievant continues to argue on appeal the validity of what he claims was a single suggestion. He surmises:

Had a discussion [of the suggestion] ... unfolded, perhaps there could have been an expanded analysis of a variety of approaches, including outreach to the hostage through the hostages organization ... a meeting with the ambassador in her office, an op ed piece praising [REDACTED] military collaboration ... a television interview with the ambassador, etc. ... Or, maybe nothing.

The Board finds that the criticism of grievant’s judgment was a fair assessment of the situation by the DCM. The record reveals that grievant not only made a suggestion, which was his right, but thereafter showed poor judgment when he pushed for the idea to be accepted without carefully analyzing the views of the Ambassador and the potential negative public reaction. The Board finds that grievant fails to prove that this criticism was falsely prejudicial or inaccurate.

#### 3. Area for Improvement (AFI): Managerial Skills and Operational Effectiveness

Operational effectiveness: Bob has many of the tools necessary to be a good

Public Affairs Officer, but he must develop stronger operational and planning skills if he hopes to enter the senior service. First, to serve successfully as a section chief he must be able to develop and present clear proposals for front office approval and then give clear implementation guidance to his team. Secondly, he must manage his time more effectively. On several occasions, he has either missed important meetings or been late for them, affecting his ability to influence or receive guidance from the front office.

### **Grievant**

Grievant claims this comment by his rater impugned his ability to manage resources at an acceptable level. He contends that the environment at the embassy had become increasingly negative in general and personally negative towards him. He claims that senior staff and members of the PAS team began to advise him to have subordinates provide the briefings on specific programs because if he briefed a program, it would be attacked, whereas, if another member of PAS briefed an issue, it would be embraced. In response to the complaint that he did not provide “clear implementation guidance” to his staff, grievant claims that he was told by several junior colleagues that his was the only embassy section that routinely held section meetings after country team meetings to ensure that his staff was advised of front office guidance.

Grievant also explained his reasons for arriving late or missing meetings. He said his performance in that regard was on a par with colleagues. He asserts that it was the DCM’s fear of the Ambassador and his concern that she wanted him to write a more critical EER that prompted this criticism.

### **Department**

The Department states that despite grievant’s claim that he held weekly planning meetings with his staff, his overall public affairs strategy remained uncoordinated and unclear. The Department submits evidence gathered by the Grievance Staff (HR/G) that showed

grievant's lack of operational skills and an inability to develop and communicate his vision to his colleagues. The Department cites a documented counseling session in August 2012 in which the DCM expressed concern that grievant had set up meetings with the American Chamber of Commerce and a television station in [REDACTED] to discuss preparations for U.S. election-related activities without first sharing his proposed activities with the pol/econ section, or with him, or the Ambassador. When grievant advised the DCM that he had requested a meeting to brief the Ambassador, but believed that the meetings were solely a Public Diplomacy (PD) event, the DCM emphasized that no Embassy program is solely PD, and even when PD has the lead, it must always coordinate with pol/econ and the front office.

### **Discussion and Findings**

Evidence gathered by the Grievance Staff shows that the DCM reported that grievant missed some important meetings or arrived late. Grievant does not dispute this assertion; therefore, this part of the statement is admittedly accurate.

In addition, grievant's colleagues corroborated the criticism that he did not possess good operational planning skills or the ability to develop and communicate his vision to his colleagues. One political officer reported:

[T]here was a lack of strategic leadership and vision coming out of [PAS] – [grievant] wasn't sure what he wanted to do, he was all over the place. ... His staff really felt his lack of leadership. He checked the box for PD, but there was nothing new or innovative, or getting an excited audience. There was no thinking outside the box.

Grievant was also counseled by the DCM in August 2012 about the need to discuss his activities with pol/econ and/or the front office before arranging meetings with the American Chamber of Commerce and a television station regarding U.S. elections. Despite this

counseling, grievant argued that consultation with others at the mission was unnecessary for this project.

The DCM pointed out that grievant was the only officer who did not take notes during the morning meeting with the ambassador, which frequently caused him to miss task assignments. The DCM also reported that grievant's staff complained that he did not accurately convey front office requests to them.

The Board concludes that there is ample evidence to support the statements in the AFI section of this EER. There is also ample evidence of counseling sessions in which the DCM addressed with grievant the issues mentioned in the AFI section. There is no evidence to support grievant's claim that the Ambassador had any influence on the decision of the DCM to draft this portion of grievant's evaluation. Grievant has therefore not met his burden of proving by a preponderance of the evidence that the AFI statements are falsely prejudicial or inaccurate.

#### D. 2013 EER RATING OFFICER STATEMENTS

Grievant asserts generally that the DCM designed this rating statement as a career-ending EER. He challenges the following statements by the DCM as inaccurate and falsely prejudicial.

##### 1. Guidance to Staff

... [D]uring the rating period, [grievant] was either not available to provide guidance to [his staff] or the guidance he gave them was in contradiction to front office objectives. His strained relations with the Ambassador frequently put his staff in the untenable position either pleasing him or pleasing the Ambassador.

#### **Grievant**

Grievant objects to the implication that he was driving a wedge between his staff and the front office by pushing his individual agenda, contrary to the dictates from the front office. He asserts that the DCM does not and cannot list a single instance in which he gave guidance that was in contradiction to front office objectives. In fact, grievant claims when he queried the

DCM on this point, his rater acknowledged he had no specific examples; nonetheless, he refused to remove the comment from the EER. When the DCM informed grievant that his staff felt caught in the middle, grievant claims he called a staff meeting to emphasize that they should always be focused on pleasing the Ambassador. Grievant asserts that despite being hurt by the mistreatment he received by the Ambassador, he continued to attend community events where she was present and sought to convey a positive image.

### **Department**

The Department responds that several documented complaints by the PAS staff support this criticism. For example, the DCM documented a meeting in September 2012 between himself and grievant's staff, during which three PAS employees expressed that grievant's leadership was lacking due to his negative feelings about the Ambassador and he was not acting in the best interests of the section. One staff member, according to the Department, claimed that grievant was placing them in a difficult position by countering the Ambassador's specific orders.

The Department describes a Public Diplomacy Officer's report to the front office that on grievant's instructions, his staff was not allowed to "like" anything the Ambassador posted on Facebook, this in spite of the fact that much of what the Ambassador posted was in fact drafted by PAS. This same officer reported to HR/G staff that for a period of several months, grievant became upset with anyone in PAS who praised the Ambassador or even treated her with basic politeness.

In November, the Department states, grievant was counseled by the DCM regarding complaints that he was actively "pitting his staff against the Ambassador." Grievant was told that he was creating undue stress on his team and should reflect on his leadership.

## Discussion and Findings

The Board concludes there is ample evidence in the record showing that grievant was counseled about his resistance and opposition to the Ambassador and his efforts to undercut her authority. Several of his colleagues corroborated this criticism. For example, the Pol/Econ Counselor reported:

[Grievant] had some ideas, but the Ambassador was in charge. It wasn't about what he wanted, it was about what she wanted for the mission. It was a struggle to get him to understand her and what her directive was. He was enthusiastic about things like Rotary Club. While a good cause, this was not the Ambassador's agenda.

Grievant's assistant, the APAO, reported to the DCM:

The Ambassador asks that we not CC [grievant]; He insists that we always do. She will only approve our programs if we involve her in every detail and make her the centerpiece; He asks that we involve her as little as possible and avoid complimenting or even acknowledging her public outreach.

We note that the rater wrote in a memorandum to the file, dated October 5, 2012, that one of the locally employed staff members who worked for grievant stated that she feared retaliation from grievant after the DCM left post the following summer. She told the DCM that in her view, grievant "considers himself superior to the Ambassador and does not respect her because she is a woman."

The view that grievant did not respect the Ambassador was somewhat corroborated by grievant's assertions that he felt that the Ambassador was jealous of him because he came to ██████ met and married someone, and soon thereafter had twins. He claimed that the Ambassador was lonely and targeted him because his "personal successes in ██████ society incensed her."<sup>6</sup> He wrote, for example:

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<sup>6</sup> Grievant attached a family photo of himself, his wife and the twins, stating, "[W]e as a family are clearly glowing." He then asked the Grievance Board to consider whether "in the context of the DCM's frequent references

Whether or not my success in integrating into greater [REDACTED] Society itself aggravated the ambassador is my speculation, but it is certainly consistent with the observations of many ... that my wife ... and I ... regularly received, specifically, “ugly” stares from the ambassador. ... Attachments AA and AB are relevant as examples of situations in which the ambassador was clearly incorrect on her “facts,” yet conveyed every confidence that she was correct.

An example of grievant’s insistence on advancing his agenda, notwithstanding clear evidence that the Ambassador was not in agreement, occurred as the Ambassador was preparing to end her tour in [REDACTED]. Grievant tried to arrange for the American artists whose works were on display in the Ambassador’s residence to sell their art in [REDACTED]. Grievant’s concern was that the artists had loaned their work to the Embassy at no cost; therefore, it would help them if they could sell their art pieces after they were removed from the residence at the end of the Ambassador’s tour. Grievant was advised by the Ambassador’s staff that this was probably not a good idea; it was not their responsibility to assist the artists in selling their work; their only responsibility was to arrange to have the artwork shipped back to the U.S. Despite the rejection of the idea, grievant continued to push to investigate whether the artists could sell their pieces in [REDACTED] until the Ambassador became aware of his plan and forcefully advised her staff to have no further dealings with grievant vis-à-vis the art in her residence.

Grievant was counseled on November 14, 2012, about complaints from his staff about the tension he was creating between his staff and the Ambassador. The DCM was sufficiently concerned that he threatened involuntary curtailment if grievant’s performance in this regard did not improve. This was repeated in a counseling session on February 14, 2013, in which the DCM warned grievant that continued insubordination and disrespect of the Ambassador would lead to curtailment. During this session, the DCM reports that grievant told him that what he

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to the Ambassador as a ‘bully,’ who is ‘lonely,’ it follows that the happiness of someone who she was actively bullying would incense her.”

said about the Ambassador “is small compared to what others at post have said.” We take this as an admission by grievant to his rater that he had, in fact, disparaged the Ambassador.

We find the record replete with evidence to support the rater’s criticism of grievant’s inappropriate opposition to the Ambassador and to front office objectives. Grievant has not proven by preponderant evidence that the challenged statement is falsely prejudicial or inaccurate.

## 2. Strategic Effectiveness and Cohesiveness of Staff

At my suggestion, he made sure that all members of the staff had projects to work on when not dealing with the many demands of the front office, but he did not take the opportunity during this rating period to improve overall strategic effectiveness and cohesiveness of the section.

### **Grievant**

Grievant claims this statement is inaccurate because the DCM implies that he lacked initiative or the ability to forecast and prepare for workflow changes without the DCM’s intervention. To the contrary, grievant argues, he regularly hosted staff planning meetings that included other section heads. And, grievant adds, after he was banned from Embassy staff meetings, he had APAO [REDACTED] brief his staff and convey messages from those meetings.

Grievant claims that at the DCM’s suggestion, he focused on planning for the period after the Ambassador’s departure. He cites as an example of his strategic planning in support of front office objectives, that he asked a Locally Employed Staff (LES) member to find ways to take advantage of the presence of American experts brought to [REDACTED] by other organizations and on Fulbright grants in other European countries, which he claims had never been done before.

### **Department**

The Department argues that in spite of grievant’s claim that he held regular staff planning meetings, there is evidence to support the DCM’s criticism that the PAS staff lacked cohesion

under grievant's leadership. The Department cites a staff member who complained to the DCM about grievant's inability to lead the group. According to the DCM, in an October 2012 meeting, grievant's staff indicated they needed "strategic guidance and a more positive endorsement of their attempts to support the Ambassador." Even after the DCM counseled grievant about his leadership, the agency reports that a staff member complained that the meeting had done no good. Indeed, staff members expressed fear of retaliation by grievant after the DCM's impending departure from post. The DCM described this period as "a total staff breakdown."

### **Discussion and Findings**

The Board finds the foregoing examples support the rater's finding of a lack of cohesion among grievant's staff that undermined the strategic effectiveness of the PAO section. The APAO wrote:

[T]hings have not improved. While we have all been crashing on translations, urgent reports to Washington, and media monitoring of the [REDACTED] assassination attempt, Zero Dark Thirty, etc., [grievant] has spent the past two days on expanding our collection of [cardboard] cut-outs ... and tasking staff to make lists of every possible famous American – from Babe Ruth to Michael Jackson. While this is a fine initiative, it shouldn't be our top strategic priority during a week with so much going on both in the press and programmatically. ...<sup>7</sup>

On October 3, 2012, the DCM attended a staff meeting with grievant, later writing that the PAS staff began to "indicate that they needed and would appreciate strategic guidance as well as a more positive approach to their attempts to support the Ambassador." After a counseling session with grievant on February 14, 2013, the DCM wrote: "... [T]he PAS staff has reported continued instances of [REDACTED] giving them contradictory advice. ... The [DCM] concluded that while [REDACTED] may think he is helping his team, in fact the opposite is occurring."

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<sup>7</sup> Grievant responded in part: "[C]ut-outs in [REDACTED] are wildly popular. I inherited one in my office upon my arrival, of ... Elvis Presley. ... So, while the issue seems meant to trivialize my performance ... it is a tad more serious. The issue of cut outs was in order to make our booth at the [REDACTED] Festival the most dynamic, fun and welcoming as it could be in order to discuss serious issues with [REDACTED] youth."

Based on these statements and concerns raised by grievant's staff, we conclude that he has not proven by a preponderance of the evidence that this statement was falsely prejudicial or inaccurate.

3. Program Focus and Priorities

... [H]is sense of program focus and priorities is weak, and he does not communicate a strategic vision to his staff. [REDACTED] has not focused on making the best use of PD time and resources in a country like [REDACTED] where a more sophisticated, targeted approach to shaping [REDACTED] views on the major 21<sup>st</sup> century challenges is our priority.

**Grievant**

Grievant claims that the DCM, despite being invited, never attended PAS programs and was thus unable to judge their effectiveness. He claims there is no basis for this criticism because his efforts were "more than sufficiently sophisticated" and PAS programs favorably impressed sophisticated audiences.

Grievant claims he was active in the Rotary Club and the American Chamber of Commerce communities in [REDACTED]. He also states that he increased the interaction between the Embassy and the [REDACTED] Institute of International and Strategic Studies ([REDACTED]) and introduced a program to recruit [REDACTED] top speakers to Embassy events.

Grievant claims that the DCM lacked familiarity with PAS programs and, therefore, this criticism could only be "the result of the atmosphere of extreme workplace bullying that the DCM was subjected to by the Ambassador and which he enabled and facilitated at the Embassy." He asserts that the Ambassador's and DCM's skepticism about his programs stemmed from the fact that he was the proponent.

## Department

The Department argues that regardless of whether the DCM attended PAS programs, he was aware of the nature and scope of them. While grievant asserts that PAS programs were focused on Mission priorities, the DCM explained that “while the programs were good in themselves and possibly appropriate in some developing democracies, they were not a good use of time or resources in a successful welfare state where the major concern was maintaining █████ support for U.S. policies around the globe and managing public skepticism about U.S. aims and objectives.”

The Department adds that when grievant’s proposals encountered front office skepticism, he routinely assumed it was because he was the source of the proposal. However, the agency contends that the real problems were that grievant did not improve his ability to listen actively to, and accept feedback from his supervisors; he did not seek the guidance of his staff; and he ignored it when it was offered. In support of its position, the Department cited comments by the Pol/Econ Counselor and often Acting DCM, who stated:

... it was apparent to me that there was a lack of strategic planning/consultation with other Mission elements on the part of the Public Affairs Section under [grievant.] Discussions with [him] tended to focus on individual, stand-alone events rather than on how Public Affairs programs and proposals fit into the bigger picture of Mission goals and objectives.

The Department also provided comments from APAO █████ who wrote:

█████ had some talents he could have used but he didn’t. There were some good programs but his programming was ad hoc – for example, he would say “let’s do this because I know this person.” There was no strategy.

The Pol/Econ Officer agreed when he wrote:

[Grievant] was enthusiastic about things like Rotary Club. While a good cause, this was not the Ambassador’s agenda.

## **Discussion and Findings**

The Board finds that the evidence supports the rater's statement as both reasonable and balanced. Grievant disregarded feedback given to him by the DCM and his staff, but persists, even in this grievance, in arguing that his ideas were discounted because of the environment of extreme and pervasive bullying by the Ambassador as facilitated by the DCM. The record reveals that despite being advised that the Ambassador was interested in other programs, grievant continued to suggest programs that did not address the issues or audiences that were the Mission's priorities.

For example, grievant complains that several of the programs that he developed were criticized as too narrowly drawn and focused. He cites his involvement in the Rotary Club, the American Chamber of Commerce (ACC) and the Big Brother Big Sister International (BBBSI) program as examples of how his program focus was broad and his priorities were consistent with Mission goals. However, the ROP shows that his activities with the Rotary Club program involved nothing more than sending invitations to various Ambassadors, senior diplomats and [REDACTED] business leaders to speak at the Rotary Club. He does not prove that this was a goal of the Mission. Likewise, he states that he once secured a commitment from the president of BBBSI to travel to [REDACTED] to establish a local chapter in which [REDACTED] youth would mentor Afghan middle and high school refugee children. However, a Pol/Econ officer wrote: "[Grievant] was enthusiastic in his support for a specific mentoring program; the Front Office did not share his enthusiasm for engaging with this particular group." Moreover, even after he was discouraged from presenting a mentoring program to the incoming Ambassador, grievant persisted. The same Pol/Econ officer stated:

When I asked [grievant] to provide input for the briefing book for the incoming Ambassador, he suggested that the new Ambassador take on a targeted cause; in

this case, ‘mentoring,’ without our knowing if the incoming Ambassador was actually interested in pursuing this cause. I asked that rather than suggest a targeted cause for the new Ambassador, we simply say “we would like to hear your ideas and make some suggestions” for personal areas of interest. [Grievant] disagreed and subsequently left the text as is.

The Board concludes that however valuable grievant’s program priorities may have seemed to him, the DCM and Ambassador made clear that they wanted programs more broadly focused on U.S. ██████████ relations. Grievant’s response to the rejection of his ideas was to attribute the rejection to the Ambassador being a bully and the DCM being an enabler, to ignore the advice of colleagues, and to ask this Board to independently review his ideas and agree with him that his program ideas were appropriate. He appears unaware that the issue was not the propriety of his ideas, or even whether the Ambassador was in fact a bully; it was advancing the Mission’s objectives and the Ambassador’s agenda.<sup>8</sup> We conclude that grievant has not established by preponderant evidence that this statement was falsely prejudicial or inaccurate.

#### 4. Professional Judgment

He has on occasion, however, created problems both with colleagues and contacts when not fully anticipating the effects his actions and words could have on others. In one case, his indiscreet revelations of the remarks of an important Embassy contact in an email with wide distribution has affected negatively [his] professional relationship with the contact. In another case, he spoke disparagingly of the Ambassador to a very influential Embassy partner, undermining support for the partner’s organization.

#### Grievant

Grievant objects to the accuracy of this statement by his rater, claiming it is falsely prejudicial and should be excluded from his EER. He asserts that the email in question (in which he accused the ██████████ government of “turn[ing] a blind eye” to a new EU requirement that

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<sup>8</sup> We make no finding as to whether the Ambassador was a bully toward grievant or others at the Embassy because we find that her behavior toward grievant had no bearing on either his performance or the criticisms of that performance.

biometric data be entered in databases prior to granting visas) was not insensitive and would not raise eyebrows if reviewed by his peers.

Grievant also insists that he never made a disparaging comment about the Ambassador to anyone in his broad friendship network outside the Embassy. “It is a lie,” he claims. Furthermore, he argues, it is a travesty of the grievance process for the Department to accept an unsubstantiated, fourth-hand rumor as fact. He argues that the DCM has offered no examples to support this criticism, despite the fact that grievant asked him to explain the basis for it.

### **Department**

The Department argues that a widely-disseminated e-mail from grievant accused the █████ Foreign Ministry of knowingly violating EU law.<sup>9</sup> While grievant argues that it is inconceivable that any independent person familiar with email could come to such a conclusion after reading his communication, the Executive Director of the █████ Fulbright Commission (EDDFC) drew just such a conclusion. She wrote to the DCM:

There are so many misunderstandings in this first communication from [grievant] that on behalf of the █████ Fulbright Commission I must ask the Embassy to call back this communication right away ... I can assure he [sic] that the █████ authorities are NOT turning their blind eyes on any rules. I’m deeply concerned about this and I would appreciate anything you can do to remedy/stop the misunderstanding this may lead to – at his earliest convenience.

The Department claims the EDDFC had complained several times to the DCM about grievant’s “tone-deafness” and requested on some occasions that the embassy send someone else to Commission meetings.

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<sup>9</sup> The email reads: “Low and behold, yesterday the █████ Foreign Ministry called Marie [Executive Director of the █████ Fulbright Commission] to relay the happy news that they would continue to turn a blind eye to the biometric requirement, at least for now, for █████

The Department points out that grievant conceded that the EDDFC's reaction to his email was "strong" and he admitted that he felt the need to reach out to her to personally discuss it. The Department asserts this is evidence that the situation surrounding this email required smoothing over.

The Department also asserts it did not accept an unsubstantiated rumor regarding the allegation that grievant publicly disparaged the Ambassador. It cites an interview of APAO [REDACTED] who wrote in an email to the DCM on February 7, 2013:

Our Fulbright Commission Director asked us to cancel a meeting with [grievant] for Friday – but not until Fulbright selection had been completed – to ensure [grievant] didn't show up at Fulbright selection. *[The EDDFC] has also relayed that [grievant] has publicly spoken very negatively about our Ambassador to our new Fulbright cohort – just before they met her.* While one can hold such views and even share them internally, she felt it was entirely inappropriate for him to criticize and scoff at the Ambassador to a group of new Fulbrighters from the US who were very excited for the opportunity to meet the US Ambassador to their new host country.

(Emphasis added).

The Department asserts that grievant does not prove that the challenged remark in his 2013 EER, that he "spoke disparagingly of the Ambassador," is falsely prejudicial or inaccurate.

### **Discussion and Findings**

The Board finds that based on the above email, the report of the EDDFC and grievant's own statements, there is evidence to support the conclusion that grievant spoke disparagingly about the Ambassador. He presents no evidence that the criticism is false or inaccurate. We find the statement to be reasonable and fair and conclude that grievant has not met his burden of proving by a preponderance of the evidence that this comment was either falsely prejudicial or inaccurate.

5. Area for Improvement: Communication and Foreign Language

Raters are required to include an AFI section on each rated employee. *See*, form DS-5055I at p. 13. In this instance, the DCM wrote:

In spite of several counseling sessions and ample opportunities to improve his leadership, his strategic thinking, and his organizational skills, [grievant] has been unwilling to accept and take seriously any assessments of his performance. He has taken few steps to address my earlier concerns about this ability to organize himself and provide strategic guidance to his team. As a first step to improving overall performance, he must improve his ability to listen actively to supervisors, subordinates, and colleagues within and outside the Embassy and engage in objective self-reflection (sic).

**Grievant**

Grievant asserts that the statements in the AFI section of his 2013 EER lack any example of an occasion when he failed to accept and respond to criticism. This, he contends, is a mandatory requirement for drafting the AFI section. He further argues that the DCM ignored this requirement because there were no such occasions and no examples that could be cited. Throughout the rating cycle, grievant asserts he responded positively to the DCM's guidance.

**Department**

The Department asserts that the AFI comment was not made in a vacuum; rather, the rater documented throughout the EER and in counseling statements his specific concerns about grievant's performance. Thus, according to the agency, grievant was made aware on multiple occasions of these criticisms in the AFI section of his EER. The Department asserts that grievant's claim "that there were no such occasions" where he failed to accept or respond to criticism and "no truthful examples [to] be cited" are refuted by the numerous documented counseling sessions with the rater and by statements of grievant's colleagues indicating his repeated failures to acknowledge or accept criticism. The Department also cites FSGB Case No. 2001-017 (June 15, 2001) where the Board held that the difference between an appropriate

example of a criticism and a general critical statement is a matter of specificity. The Department also cites another FSGB Case, No. 2011-050 (August 24, 2012) in which the Board held that a comment in an AFI is not simply a general criticism or a recommendation for the future if it contains enough specificity for the rated employee to respond and take ameliorative action. In the instant case, the Department claims that the criticism, following the numerous counseling sessions and other comments in the EER, is sufficiently specific that the grievant could respond and take action to improve his performance.

### **Discussion and Findings**

In the instant case, the rater documented throughout the EER and in counseling sessions the specific concerns he had about grievant's performance. The EER states on the first page that grievant and his rater held counseling sessions on July 19, 2012, October 2, 2012 and November 9, 2012. The EER reads: "I confirm that counseling sessions took place during the rating period and that at least one of them was documented in writing using the Counseling Certification Form (DS-1974)." This statement is followed by grievant's electronic signature.

Grievant challenges the AFI comments as not providing any examples that grievant failed to accept or respond to criticisms. In FSGB Case No. 2011-050 (August 24, 2012), this Board stated: "[W]e find that grievant was made aware of deficiencies in her [specific skill area] and that reference to those deficiencies in the AFI section of her EER should not have come as a surprise." Similarly, here, we find that grievant was made aware of certain deficiencies in his leadership, strategic thinking and organizational skills in numerous counseling sessions and meetings and that despite these meetings and time to improve, grievant remained unwilling to accept the criticisms of his performance. In one instance, on October 1, 2012, the DCM held a counseling session with grievant during which he explained that grievant should work on

communication skills, specifically avoiding rambling and speaking “apostrophically.” Grievant’s response was to state on the next day that he wanted to make two points, but, according to the DCM, grievant lost track of his points and began rambling about the Ambassador. In another instance, on November 14, 2012, the DCM advised grievant that his staff complained about his leadership, specifically stating that he was “actively undermining the Ambassador through what was perceived as pitting his staff against the Ambassador.” In this meeting, the DCM reported that he explained to grievant that his responsibility as a leader was to establish a working environment that served the Ambassador. Grievant expressed that he understood the criticism, but denied the behavior. On March 8, 2013, the DCM met again to counsel grievant to prepare for curtailment because he did not seem to accept or respond to previous criticisms. The report of this session states, “[T]he two [grievant and the DCM] exchanged a number of examples, attempts to counter [by grievant], and then further examples.”

The Board is persuaded by the reports of the numerous counseling sessions and meetings between the DCM and grievant that grievant received specific examples of the rater’s concerns about his perceived performance deficiencies. We further conclude that the DCM documented that grievant repeatedly refused/failed to accept his criticisms. We therefore conclude that the AFI statement did not come as a surprise and that grievant had sufficient opportunity throughout the 2012-13 rating period to improve.<sup>10</sup> We find the AFI statement is reasonable, fair and balanced and complied with instructions for drafting an EER.

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<sup>10</sup> See, Counseling Session with ██████████, November 14, 2012; Counseling Session with PAO ██████████, February 14, 2013; Meeting between [Chargé d’Affaires] CDA ██████████ and PAO ██████████ on February 28, 2013.

## E. ADEQUACY OF COUNSELING

### **Grievant**

Grievant claims he was inadequately counseled because he did not receive a copy of the DS-1974 Counseling Certification for the 2013 rating period. He further argues that he received only one official counseling session in a seven-month period and that the DCM did not “contemporaneously apprise [him] of perceived shortcomings,” in violation of required procedures.

### **Department**

The Department responds that grievant’s arguments are not supported by the record. The DCM’s counseling sessions with grievant were numerous and well documented, according to the agency. The Department states that its regulations on counseling are clear. Under 3 FAH-1 H-2815.5 a. (3), rating officers are expected to review performance with subordinates at least two times in the course of the year. However, only one of these counseling sessions must be documented by a DS Form 1974 Counseling Certification. Given the extensive amount of counseling grievant received during the rating period, the Department claims grievant cannot reasonably claim to have been prejudiced by not being presented with a copy of his 2013 DS 1974 Counseling Certification form.

Finally, the Department asserts, the key factor in assessing the adequacy of counseling when deciding whether criticisms in an EER are fair is whether the grievant had adequate notice of what was expected of him, so that subsequent critical comments in an EER do not come as a surprise. FSGB Case No. 2007- 043 (February 21, 2008). The test is whether grievant was, or should have been, aware of an area in which his performance needed improvement. FSGB Case No. 2003-048 (May 5, 2006), FSGB Case No. 2005-023 (October 7, 2005), FSGB Case No.

2005-068 (September 11, 2006). The record in the instant case, the Department asserts, provides ample proof that grievant was given clear notice of the DCM's dissatisfaction with the quality of his work and the areas for improvement.

### **Discussion and Findings**

3 FAH-1 H-2326.2 reads:

- a. A post or bureau may advise HR/PE that a member's performance has been unsatisfactory only if the member has previously been advised of the areas of performance which are deficient and been given a reasonable opportunity to demonstrate satisfactory performance. A period of 60 days ordinarily will be sufficient to demonstrate needed improvement, but a lesser period may also suffice depending upon the nature and extent of responsibilities, the member's time in the position, and similar circumstances.

The record in the instant case provides ample evidence that grievant was given clear and repeated counseling and warnings that the quality of his work needed improvement in very specific ways and that if it did not improve, he would face involuntary curtailment.<sup>11</sup>

The Board finds that grievant has failed to meet his burden of proving by a preponderance of the evidence that he was inadequately counseled or given insufficient opportunity to improve. He also does not establish that the Department failed to follow proper EER procedures. Grievant certified when he signed the 2013 EER that he was counseled the cited three times during the rating period. Although the Department concedes that grievant was not provided a copy of the record of the one counseling session that was required to be memorialized on a DS Form 1974, 3 FAH-1 H-2815.5 a. (3), we conclude that grievant received such extensive counseling that the nonproduction of the written form did not prejudice him.

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<sup>11</sup> *Ibid.*

F. GRIEVANT'S FOLLOW ON INTERROGATORIES TO [REDACTED] [REDACTED]

**Grievant**

Grievant contends that the Department failed to submit his follow-on interrogatories to Mr. [REDACTED] Post's Senior Human Resources Officer, who would have confirmed his briefing abilities in [REDACTED] to both [REDACTED] and other ambassadors outside of the Embassy. He also contends that Mr. [REDACTED] thought the DCM was stubborn and that the Ambassador was a bully. Grievant asserts that proving these points would support his claim that the DCM's assessment of him was influenced by extreme bullying.

**Department**

The Department claims that grievant does not present a cogent argument in support of this claim. It states that had Mr. [REDACTED] answered the interrogatories and even had he given the responses grievant presumed he would – that the Ambassador was a bully and the DCM was stubborn – it is unclear how this would prove that the DCM was influenced by extreme bullying, that grievant's colleagues were affected, or that all of this negatively impacted grievant's ability to do his job or influenced the writing of this EER. The Department states that it objected to grievant's interrogatories to Mr. [REDACTED] on grounds that they were irrelevant to grievant's claims and unlikely to lead to the discovery of material information. The Department argues that even if grievant was able to brief well in front of other audiences, it does not mean that he did not struggle with daily press briefings in front of the Ambassador. In the end, the Department states, Mr. [REDACTED] opinion of the DCM and the Ambassador are not relevant to the issues raised in grievant's appeal.

## **Discussion and Findings**

The Board allows the parties to seek discovery of all information that is relevant or that will lead to the discovery of relevant information. It is unclear to this Board how Mr. [REDACTED] opinion of the DCM and the Ambassador are relevant to the issues raised in this appeal. Moreover, in the absence of a motion to compel these discovery responses, grievant cannot now be heard to complain about the nonresponse.

### **G. REQUEST TO REOPEN THE RECORD**

#### **Grievant**

After grievant submitted his final rebuttal in the case and the matter was taken under advisement by the Board to deliberate and issue a decision, grievant filed a request to reopen the record in order to submit information that in 2015, a former subordinate, [REDACTED] [REDACTED] from Embassy [REDACTED] was separated for cause. He claims that this information is relevant to this case because the DCM claimed that grievant disregarded local staff advice and failed to “accept feedback from” this now-terminated locally employed staff (LES). He maintains that the Department’s decision to separate Mr. [REDACTED] undermines its position that grievant *wrongfully* declined to accept feedback from Mr. [REDACTED]

#### **Department**

The Department opposes the request to reopen the record on the ground that the additional information grievant seeks to submit is irrelevant to the issues on appeal.

## **Discussion and Findings**

The Board has considered grievant’s request to reopen the record, along with the agency’s opposition and grievant’s reply. We conclude that the request should be denied because grievant does

not propose to offer additional information that is relevant to the issues that must be decided in this grievance appeal.

#### IV. DECISION

The Board concludes that grievant failed to prove the claims in this grievance appeal by a preponderance of the evidence. The grievance appeal is denied in its entirety.

1. Expungement of the redacted 2012 EER is denied.
2. Expungement of the 2013 EER is denied.
3. Expungement of the redacted 2014 Low Ranking Statement is denied.
4. Grievant's request to rescind the referral to the PSB is denied.<sup>12</sup>
5. Grievant's request of an extension of his time in class and time in service by two years is denied.
6. Grievant's request to extend his promotion window by two years is denied.
7. Grievant's request that if he is promoted, it be made retroactive to 2012, is denied.
8. Grievant's request for attorney's fees is denied.
9. Grievant's request to reopen the record is denied.

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<sup>12</sup> See, 3 FAH-1 EXHIBIT H-2321.1A, Part III A.2. a and b (Selection Board precepts) that read:

- a. All career members of the Service who are reviewed for promotion shall also be reviewed for low ranking and for possible referral to a *Performance Standards Board* (PSB). . . .
- b. The [Selection] *Board* will review the *Performance* Folder of each low-ranked member and specifically identify those whose records indicate they may not have met the *standards* of *performance* for their class. These members will be referred to a PSB, which will independently make selection-out determinations after reviewing the files of the members referred to it. Selection *Boards* should be scrupulous in identifying and referring to the *Performance Standards Board* employees who are obviously sub-*standard performers*.

**For the Foreign Service Grievance Board:**



Susan R. Winfield  
Presiding Member



J. Robert Manzanares  
Member



Harlan F. Rosacker  
Member