

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

{ Grievant }
Grievant

Record of Proceedings
FSGB No. 2004-061

And

Date: June 8, 2005

Department of State

DECISION - EXCISION

For the Foreign Service Grievance Board:

Presiding Member:

Garvin L. Oliver

Board Members:

Garber Davidson
Jeanne L. Schulz

Special Assistant:

Joseph Pastic

Representative for the Grievant:

Self

Representative for the Department:

Joanne M. Lishman
Director
Grievance Staff

Employee Exclusive Representative:

American Foreign Service Association

OVERVIEW

Grievant, an FS-02 Consular Officer, appeals the Department of State's denial of her grievance alleging that her April {Year} to April {Year} Employee Evaluation Report (EER) is inaccurate and falsely prejudicial, causing the Selection Board to low rank her in {Year}. For relief she requests removal of the contested language from the EER, replacement of the low-ranking with a mid-ranking, a reconstituted Selection Board and an additional year of time-in-class (TIC).

Grievant was Chief of the Consular Section at the American Embassy in {Host City}, {Host Country} during the bombing of the {Terrorist Event} and the 9/11 terrorist attacks in the U.S. The DCM and Ambassador were her rating and reviewing officers. For security reasons, the Consulate was closed to the public for all but emergency citizen services for most of the rating period. However, work continued and grievant was assisted in the Consular Section by TDY officers and local staff. In late August {Year} an Excursion Tour Civil Servant (ETCS) arrived at post to fill an FS-03 position. She was in a four-grade stretch position with almost no prior consular experience. Five of the critical statements in the EER concerned grievant's integration and management of the ETCS and designating an acting head of section. The other two dealt with grievant's need to be more responsive and sympathetic to services required by her colleagues.

Grievant contends that her relations with the DCM were tense because of his attempts to micromanage the Consular Section and Front Office attempts to circumvent visa referral procedures. The situation deteriorated after arrival of the ETCS because, although she had a difficult personality, shouted at other officers, did not follow orders, etc., she had a special relationship with the Ambassador and unrestricted access to the Front Office, where she complained about grievant. Grievant alleges that the Ambassador assisted the ETCS with aspects of her EER and directed grievant's successor to nominate the ETCS for a Superior Honor Award, which she later received. She asserts that though she consulted with the DCM on matters pertaining to the ETCS, she was never counseled on better integrating her into her section. Grievant asserts that in early January {Year} she requested annual leave in late February. Numerous times grievant discussed with the DCM naming the newly arrived Junior Officer who showed promise as acting head of section over the higher ranking, but inexperienced and unreliable ETCS, but he offered no guidance. Later, he conditioned approval of her leave on her designating the acting head first, as well as insisting that a consular officer be on duty during part of her leave (in addition to the Embassy duty officer).

The Department solicited statements from a number of individuals present at the Embassy during the rating period, but chose to rely on and quote extensively from lengthy statements by the DCM and Ambassador in support of their EER criticisms in reaching its decision to deny the grievance. Despite the fact that grievant's counseling certificate was not drafted and signed by the DCM until four months after the session, the agency asserts that grievant was counseled on managing the ETCS. It contends that even if an inappropriate relationship existed between the Ambassador and ETCS, a skilled supervisor would have been able to rise to the challenge and handle the difficult situation

effectively. It discounts grievant's claims that it neglected to give any weight to statements from colleagues about the ETCS or grievant's responsiveness to Country Team needs by maintaining that the statements do not support a conclusion that the relationship was not solely professional and that in a previous decision this Board found that a supervisor has a stronger vantage point from which to evaluate an employee's performance, having knowledge of the broader picture and the impact of employee actions on the organization.

The Board determined that the grievant had carried her burden of proof. In contrast to statements by the DCM and Ambassador, whether solicited by grievant or the Department, numerous statements in the record offered by Embassy colleagues, staff and local employees, overwhelmingly support grievant's positions on the issues. The Board found that the relationship between the ETCS and Ambassador made it impossible for grievant to adjust her management style to better integrate the officer into the unit. By all accounts, grievant was an extremely hard-working, discreet, nurturing supervisor who provided guidance and training for her staff. She was placed in an untenable position of supervising an inexperienced, temperamental employee who did not follow instructions and who was unhappy with the work and restricted security environment. The Department has offered nothing in support of its position that a skilled supervisor would be able to successfully rise to meet the management challenge presented here.

Criticisms of grievant's non-responsiveness to Country Team visa referral requests are equally unsupported. Security checks and visa processing requirements changed drastically in the wake of the terrorist attacks. Grievant could not issue visas any sooner than when authorization was received from the Department. Once again, statements by grievant's colleagues were specific in mentioning the lack of understanding by the Front Office in grievant's attempts to do things right.

Likewise, the Board found criticisms for failure to more timely designate her back-up or more adequate explanations for the delay to be falsely prejudicial. The DCM never indicated how far in advance he considered reasonable. Grievant apparently named her back-up and the DCM approved her leave request one week in advance. It is uncontested that there were numerous discussions on this difficult issue, yet instead of offering guidance, the DCM conditioned approval of her leave on inappropriate demands, which precipitated Department intervention.

The Board was not persuaded that grievant had been counseled on her management of the ETCS, but even were she counseled, the Board would have found the criticism falsely prejudicial because of the special relationship between the Ambassador and ETCS. The Board held that it was patently unfair to criticize grievant for a situation the Ambassador created and which the DCM allowed to continue.

The Board found that the EER did not meet reasonable standards of completeness, balance, accuracy and documentation. The rater and reviewer were biased against grievant to the point that they were unable to give a fair and reasonable assessment of her performance or potential. The Department was directed to expunge the EER, nullify the

low-ranking, replace it with a gap memo and mid-ranking, and extend grievant's TIC by one year.

DECISION

I. THE GRIEVANCE

Grievant {Grievant} {Grievant}, an FS-02 Foreign Service Officer with the Department of State (Department, agency), appeals the agency's denial of her grievance alleging that an Employee Evaluation Report (EER), covering her performance at the American Embassy in {Host City}, {Host Country}, from April 16, {Year} to April 15, {Year}, contains inaccurate and falsely prejudicial statements, causing the {Year} Selection Board (SB) to low rank her. For relief she requests: removal of the contested language from the EER; reversal and replacement of the low ranking with a mid ranking; review of the amended EER by a reconstituted {Year} Selection Board; an additional year of time in class (TIC); and, any other relief deemed just and proper.

BACKGROUND

{Grievant} arrived at post in August {Year} and served as Chief of the Consular Section. That section provided the full range of services – non-immigrant and immigrant visas, American citizen services and federal benefits -- while coping with security threats, high levels of fraud, a dearth of civil documents and serving approximately 40,000 American citizens resident in {Host Country}. The October {Year} terrorist attack on the {Terrorist Event} and the security situation in its wake essentially left {Grievant} as the only Consular Officer at post. A series of WAE/TDY¹ Consular Officers assisted her in the section from October {Year} through September {Year}.

On about August 20, {Year} an Excursion Tour Civil Servant (ETCS), {Name 1}, arrived to work in the section. On August 28, {Grievant} left on long-planned annual leave to attend her daughter's wedding. {Name 1}, who had very little prior consular

¹ When Actually Employed/Temporary Duty (retired officers who work temporarily for the Department)

experience, was assigned to a Foreign Service Officer position four grades higher than her civil service rank. With a week's overlap and in consultation with the Deputy Chief of Mission (DCM), grievant named {Name 1} as Acting Chief of Section over the WAE/TDY officer, because {Name 1} was permanently assigned to the mission. {Grievant's} scheduled return to post on September 14 was delayed to September 20 by worldwide travel disruptions in the aftermath of the 9/11 terrorist attacks. Upon arrival she found {Name 1} "angrily shouting" at the TDY officer in front of the consular staff.

Shortly thereafter, {Host City} went on authorized departure status and although {Name 1's} position was considered "essential", she nevertheless wanted to leave because she was distraught over 9/11 and her family was upset that she was in {Host Country}. {Grievant} and the DCM, {Name 2}, agreed, and an experienced Eligible Family Member (EFM) was quickly hired as a Consular Associate to fill in. {Name 1}, however, ultimately decided to stay. The WAE/TDY person left in early October, leaving grievant and {Name 1} as the only Consular Officers.

Because of security threats, the Embassy, including the Consular Section, was closed for much, if not all, of September and October {Year} and January and April {Year}. With the exception of emergency personnel, the consular staff remained home for much of this time.

As {Grievant's} rating officer, DCM {Name 2} held a counseling session with her on October 31, {Year}. According to the EER at issue, her work requirements were also revised on that date to include the following under Specific Objectives: "Integrate fully the excursion tour Civil servant and the expected two new junior officers in the

section and guide and promote their professional development.” In Part III. A., grievant’s job was described as:

The incumbent serves as the Chief of the Consular Section. She supervises a succession of TDY consular officers, an excursion tour civil servant (ETCS), a junior officer, a consular associate, a part-time rotational junior officer as well as three locally-hired Americans and ten Foreign Service Nationals (FSNs). She serves as the section’s anti-fraud officer and federal benefits officer. She also supervises directly the IV and ACS operations, and supervised NIV operations until January {Year}. During this rating period she reported directly to the DCM.

Special circumstances influencing the work in Part C stated:

Credible security threats from al-Qa’ida elements, persistent inadequate American staffing, two authorized departures from June 9 to August 3, {Year}, and September 19, {Year}, to March 18, {Year}, an endless turnover of TDY staff, and temporary closures of the Consular section for security reasons continued to characterize life in {Host City} for the Consul and the rest of the Embassy.

Relations between grievant and the DCM were strained during the entire rating period. Grievant’s EER was completed shortly before her medical evacuation and curtailed assignment from post.

Grievant challenges the following comments by the DCM in the Evaluation of Potential section of the EER:

Managerial: . . . {Grievant’s} management of her section would benefit from more timely designation of her back-up or more adequate explanations of the reasons for delay.

Interpersonal: . . . She succeeded well in two cases, but, having to deal with a difficult personality conflict in the other case, could have done better With American colleagues outside the Consular section, {Grievant’s} terse manner sometimes led to the perception that the Consular section was not responsive to their concerns.

Under Area for Improvement (AFI), Interpersonal, he wrote:

While {Grievant} has done a very good job integrating relatively inexperienced FSNs into a working Consular team, she needs to apply those

same skills better in integrating new American staff. Adjusting her management style to take into account the different temperaments of colleagues and to convey more sympathy to their expressed concerns would assist in those efforts.

She also contests the following comments by her review officer, Ambassador

{Name 3}:

She has also been challenged to integrate both a junior officer and an Excursion Tour Civil Servant (ETCS) officer into consular operations – one has gone smoothly, the other could have benefited from better communications and more support.

...

The Consular Section could have been even more productive, in my opinion, with a greater emphasis by {Grievant} on teamwork and more sympathetic attention to consular services required by other members of the Country Team . . .

. . . {Grievant} has felt that the DCM's supervision at times amounted to 'harassment.' I do not agree. I believe the DCM rightly identified managerial shortcomings, for example, {Grievant's} reluctance to designate officially an officer-in-charge during her absence, and the DCM rightfully corrected these managerial shortfalls.

POSITIONS OF THE PARTIES

The Grievant

Grievant avers that early in the rating period, the DCM “. . . established a pattern of excluding the Consular Section from important Embassy issues.” For example, Emergency Action Committee (EAC) meetings to discuss threats against American personnel and citizens were held frequently prior to June 9, {Year}, the first period of authorized departure. The DCM did not include grievant at these meetings. She asserts that she was called to the Embassy for an EAC meeting on one weekend and then, in front of the others, the DCM told her to leave because she did not have the necessary security clearance to hear the discussion of the threat.

Integration of the ETCS

{Name 1} continued to have “difficulties” with the TDY officer. Grievant states that after one “particularly nasty confrontation” she called {Name 1} into her office to discuss ways she ({Name 1}) could deal with the problem without resort to shouting: “the ETCS in turn shouted at me, accusing me of not understanding {Ethnic} women.” The unpleasant exchanges between {Name 1} and the TDY officer continued and grievant maintains that she discussed the problem with the DCM, who agreed that {Name 1’s} behavior was unacceptable. Grievant contends that, at her urging, she and {Name 2} met with {Name 1} in his office in mid-October {Year} to discuss professional conduct. That meeting was not grievant’s October 31 counseling session, as he now claims.

The counseling session, grievant asserts, dealt with the DCM’s claim that the Consular Section was not being helpful to Embassy staff or supportive of the country team, though he could not provide any examples when she asked for an explanation. Grievant wrote up her own notes shortly after the session and is therefore sure that her management of {Name 1} was not one of the topics discussed, although the DCM included that as a topic in the notes of the session he wrote up on the counseling form months later, on February 28, {Year}.

With regard to consular support and the DCM’s negative comment in her EER that her terse manner sometimes led to the perception that consular was not responsive to the needs of colleagues outside the section, and the Ambassador’s negative comment that the section could have been more productive “. . . with a greater emphasis by {Grievant} on teamwork and more sympathetic attention to consular services required by other

members of the Country Team,” grievant contends that the “Front Office” repeatedly attempted to abuse the visa referral system in favor of applicants with no demonstrable national interest and even then, did not follow procedures for referral submissions. When she had explained to the Country Team the requirement for presenting referrals to the head of the visa unit and receipts for fee payment rather than cash on the NIV² clerk’s desk, as outlined in the Embassy’s visa referral policy, all other Country Team members accepted her suggestions and made appropriate changes, but the Front Office accused her of “trying to make their work difficult.”

Even when the Consulate was closed for security reasons to all except emergency citizen services, and staff were ordered to remain home, grievant contends that the Front office continued to send her visa applications for friends, urging her to issue them without interviews and to call in her visa staff to process them despite the danger. As a result, grievant asked the Visa Office (VO) for support and received a June 13, {Year} response email addressed to her and DCM {Name 2}, outlining appropriate activities and priorities during difficult times.

Annual Leave Backup

Grievant disagrees with the DCM and Ambassador’s criticism of the timing of her backup designation. She maintains that in November {Year} the Front Office asked all section heads to advise of their annual leave plans for the next three months. She indicated R&R³ travel plans for the end of February. On January 12, {Year} grievant submitted a leave request for February 21 to March 20 (16 annual leave days).

According to grievant, though she had taken only one annual leave day since September

²Nonimmigrant visa

³ Rest & Recuperation, generally the Department pays for a flight to a designated port of entry in the U.S.

20, the DCM responded that she was always taking leave, asked if she had any left, why she wanted to take so long and for her to reconsider. A week later he asked her if any other American consular staff planned leave during that same time to which she responded in the negative. On January 30 she consulted the DCM about the possibility of “dividing” responsibility for the section between the new JO⁴, who had arrived in December and showed “extraordinary ability” and {Name 1}, who had not performed well and who had continuing “personality conflicts with the consular associate and a number of the FSNs.” {Name 2} agreed it was a possibility.

They discussed it again in a meeting on February 3, during which grievant asserts {Name 2} for the first time informed her that a Consular Officer had to be on duty in {Host City} during the upcoming {Host Country} holiday, occurring just prior to the beginning of her planned leave. She responded that the consular associate would be in {Host City}, but he did not indicate whether that met his new requirement. He also informed her for the first time that he would not approve her leave until both a consular duty officer and an acting head of section were named:

At no time did I consider naming the consular associate as Acting Chief of the Consular Section as the DCM has stated. What the DCM now describes as my inability to reach a ‘decision,’ was in fact sensitivity to the potential results of a difficult decision. I eventually named the junior officer as Acting It was a decision based on rank, management skills and promise. The DCM later agreed that my decision had been a good one. In my absence the [JO] acted appropriately and quickly when two grenades were thrown over the Embassy perimeter wall, and during a credible threat against a supermarket frequented by foreigners.

However, the decision resulted in greater tensions between the ETCS and the rest of the . . . Section In fact, the ETCS extended her leave on both ends of the holiday without requesting leave in advance, claiming sickness when she learned that she would not be Acting . . . and claiming ticketing difficulties at the end of the holiday for her failure to return to post

⁴ Junior Officer

on time. In addition, the ETCS, as back-up consular systems administrator allowed her password to expire so that no one at post could renew passwords and create computer roles. This happened despite daily admonitions in the consular systems that her password was about to expire. As back-up . . . she could renew her own password. Furthermore, the DCM reported to me that the ETCS had been uncooperative with the consular staff during my absence.

[Ambassador {Name 3}] is also cited by the Department to support statements alleging a problem with designating an Acting Chief The Ambassador claimed that I sought his assistance in my desire not to designate an Acting Chief. I did speak to the Ambassador before taking annual leave, but the focus of that conversation was my request for a curtailment. I felt strongly that the micromanagement from the DCM constituted a form of harassment. I discussed these problems with my CDA [career development advisor], and the Bureau of Consular Affairs

I did not refuse the DCM's request to name someone to be in charge, but I did not accept the new demand to name a consular duty officer when consular officers were part of the regular duty schedule, and the duty officer book had clear guidelines on what to do with emergencies when the Embassy was closed. My conversation with the Ambassador was about my request for curtailment and to discuss the problems I was experiencing with the DCM.

After designating the JO as acting head grievant left on R&R at the end of the {Host Country} holidays, February 26 - March 23, the DCM having signed her leave request "at the last possible hour."

Grievant challenges {Name 2's} comment that she could have done better in dealing with a difficult personality conflict, adjusting her management style to take into account the different temperaments of colleagues and conveying more sympathy to their concerns, and the Ambassador's statement that her integrating {Name 1} into the section could have benefited from better communication and more support as incorrect and prejudicial:

On numerous occasions the ETCS came to me to discuss her unhappiness with the assignment in {Host City}. The security situation definitely limited her social life. She had come to {Host Country}, she said, to 'get a

life,' and that was impossible. She expressed dissatisfaction with the security restrictions, which unfortunately affected all of us equally. We had fairly long discussions about the changes that happen to a post that suffers a terrorist event. I was able to relate to her my experiences in {Foreign City} when the Americans were killed there, and I hoped that talking about what happens when security overwhelms other embassy concerns would help her. These were not confrontational meetings, but discussions with practical suggestions on how to cope. Despite my efforts, the ETCS continued to struggle with the conditions in {Host Country}, and as a result continued to cause difficulties in the Consular Section.

Grievant points out that she successfully integrated the new JO and Consular Assistant into the section, as well as three previous TDY officers. She alleges that as she was preparing {Name 1's} EER that April, Ambassador {Name 3}, "... who had developed a personal relationship with the ETCS, intervened and wrote sections of her EER. The ETCS brought these to me and urged me to use the Ambassador's comments in my evaluation." This relationship, grievant contends, inappropriately interfered with an objective assessment of grievant's own performance and instead resulted in an inaccurate and biased evaluation in violation of 3 FAH-1 H-2815.

Grievant adamantly denies the DCM's claim, made in a later statement to the agency, that {Name 1} went to him three times saying that it was impossible to work with {Grievant}, who was treating her unfairly and criticizing her in front of the {Host Country} staff, and that therefore she wanted a curtailment. {Grievant} says that, on the contrary, when {Name 1} had wanted to curtail, she supported her request. When {Name 1} decided to stay, she counseled her and supported her annual leave requests in an effort to ease the strain of living and working in {Host City}.

Grievant submitted statements from her American colleagues and {Host Country} staff, all attesting to her encouraging management style, calm and patient professionalism, and attention to improving performance. She denies ever criticizing

{Name 1} in front of others, or the DCM mentioning to her any such claims or his counseling her on loss of 'face' in the {Host Country} culture.

Moreover, she alleges that:

The non-professional relationships of the ETCS with the DCM and the Ambassador made it difficult to incorporate the ETCS into working environment of the Consular Section. The DCM's open backdoor on personnel issues undercut my attempts to deal fairly with an employee who regularly left work early, did not return from vacations on time and left an impression of not doing her fair share of the work. The negative language cited above concerning the ETCS is prejudiced by the DCM's personal relationship with the ETCS and not an accurate objective assessment of my performance.

Counseling

Grievant objects to the agency's finding that she was counseled based on the DCM's "assertions and post-hoc counseling certificate." She characterizes his claims of repeated counseling, her refusal to accept his guidance and that he was "forced" to broker a meeting between her and {Name 1} as simply not true. Grievant's contemporaneous notes of her October 31, {Year} counseling session contain no mention of an 'integration' problem and she submits that it would be illogical for her to have ignored sharp criticism of her management and leadership skills while comprehensively addressing all other issues he raised during the session. She adds:

The Department cited the DCM's explanation for his unacceptable delay in preparing a counseling statement The DCM . . . was forced to 'plea overwork' Embassy staff from all sections suffered from the same overwork [W]e dealt with high demand for consular services in an environment of rapidly changing requirements. In addition, for several months, FBI agents came into the Consular Section by night and scrutinized our files. Fortunately, the FBI found no inappropriate or illegal practices in {Host City}. At the same time, we had the oldest consular equipment in the world. Three trips for training and software/hardware replacement were cancelled during this rating period for security reasons. In January {Year} and again in April {Year} the Embassy closed for security reasons and consular services were suspended. Consular staff moved to the alternate

command center where we maintained e-mail, telephone and fax contact with American citizens in the country. The workweek was long. I was usually at the Embassy eleven to twelve hours daily, spending six/seven hours a day at the window for immigrant visa, diversity visa or American citizen services, and reviewed incomplete immigrant visa cases at home at night and on weekends.

I agree the DCM was working hard. We all were. However, the DCM did not write a counseling certification in a timely fashion (February 28, {Year}), and then only after I spoke to the Ambassador about a curtailment (February 19, {Year}) when he felt he had to cover himself. It is not an excuse for allowing him to include false and unsubstantiated statements.

Grievant disagrees with the Department's later argument that she was counseled regarding integrating {Name 1} into the section during the mid-October meeting brokered by the DCM with the two of them. She explains:

The ETCS arrived at post on . . . August 23, {Year}. She had exactly one week in the Consular Section before I departed . . . to attend my daughter's wedding. I made every attempt to familiarize [her] with consular operations, but she was also busy with the administrative details that every new arrival must attend to. In addition to [{Name 1}] in the consular section, a WAE TDY, who had been at post throughout the summer and through the first authorized departure, was at post and familiar with consular operations in {Host City}.

When the events of September 11 took place, the ETCS was inundated with demands that she was not prepared for. It is fair to say that nothing I could have done in our week together would have prepared her to cope with the swift influx of FBI agents or the immediate demands for information from the Department After September 11, the ETCS was distraught by the unsettled conditions and the security restrictions on our movements. When {Host City} went on authorized departure on September 20, she immediately asked to curtail. The DCM and I had several talks about her request . . . and we decided it would be better to have her leave even though she was considered 'essential,' than to have a very dissatisfied employee in {Host City}. The WAE TDY had reported to me that the ETCS had shouted at her in front of the employees, and I witnessed the same behavior

Although the ETCS was then free to curtail, she decided not to do so. [She] resumed her verbal attacks on the WAE TDY. I spoke to [her] and mentioned the inappropriateness of her behavior I then requested a meeting with the DCM to discuss these issues.

The US launched its attack on Afghanistan on October 8. (2001) Not knowing the reaction of the {Host Country} government or {Host Country} people, core staff stayed in the Embassy 24 hours a day for 3 days. The ETCS was not in the Embassy, but she was asked to maintain a presence in the Alternate Command Center, which was located near her residence, during daytime hours. On the first day . . . [she] left her post . . . without informing those of us in the Embassy. We were very concerned for her welfare and sent security staff to find her. As it turns out, she had left her post for a two hour or more lunch with her friend, and she was unharmed. However, we were perturbed by her behavior.

After the Embassy resumed normal operations (although the Consular Section was providing only American citizen services) I requested a meeting with the DCM to discuss these personnel issues – the ETCS’ verbal abuse toward the WAE TDY and her behavior during the emergency The DCM discussed professional conduct. He did not counsel me on managing the ETCS. I requested the meeting.

Grievant also denies that the DCM counseled her at other times about dealing with {Name 1}. She contends that they discussed the situation, but the discussions centered on how to resolve it; she was never counseled by the DCM or Ambassador on the issue as a deficiency in her own performance.

Non-responsiveness to Country Team

The DCM referred to grievant’s “terse manner” sometimes leading non-consular colleagues to the perception that consular was not responsive to their needs. Grievant notes that {Name 2} could give her no examples during their counseling session and he could do no better in his later statement to the Department:

No, I’m sure I gave examples and wish I had my notes of the discussion to cite them. I recall pressing {Grievant} to get a revised visa referral system in place after 9/11 so all staff would be clear what to do Although I don’t remember now the details of various complaints I got from others in the Embassy . . . the gist of them was that it was like asking 20 questions of {Grievant} to get a straight answer.

Grievant responds that she herself had brought up the problem of dropping referrals and monies for fees on a vacant desk or with an FSN and when she made “very definite proposals for correct use of the referral system,” the Front Office accused her of trying to make work difficult. At the time, she claims {Name 2} had agreed that her effort was a contribution to the Country Team and that the Ambassador had ridiculed her efforts. She asserts that all Country Team members except the Front Office accepted her suggestions and made the necessary changes for referrals.

She also states that she had begun revision of the referral policy in May {Year}, just before the Embassy threat closure and authorized departure. The NIV unit remained closed from that June until grievant’s departure from post a year later. The newly drafted policy had been completed when it was overtaken by the events of September 11, {Year} and a subsequent series of Department-mandated drastic and increasingly stringent changes in the processing of all visas. Almost all applicants were subject to time-consuming name checks and security clearances, among other things. She believes {Name 2’s} negative comment was generated by his own dissatisfaction:

After the June {Year} closing of the Embassy, the DCM came . . . with a large stack of tourist visa applications of his friends Only emergency staff was permitted to come to the Embassy, and the Consular Section performed only emergency American citizen services. The NIV Unit was closed. The DCM asked me to issue visas to people without interviews in cases that were not clearly approvable, including the third-country national maid of the director of the UNDP⁵. At that time I sought the direction of the Visa Office At another time he asked me to issue a visa to a youth who had previously overstayed a tourist visa while studying illegally in a U.S. public high school.

A “terse manner” was not mentioned in the DCM’s counseling memo. In his later, amplified statement to the Department, grievant contends his examples are still not

⁵ United Nations Development Program

specific enough to have allowed her to improve; i.e., “not looking” at a person or “playing 20 questions,” constitute vague and contradictory charges, which she asserts the Department credits, while ignoring a contrary assessment by post’s Administrative Officer.

The Ambassador’s later statement to the agency in support of his negative comment on consular support concerned the issuance of visas for counter terrorism training in the U.S. Grievant cannot recall any incidents when her section failed to issue visas for training in a timely manner:

I would like to put the issue in the context of the security situation . . . with changing directives from . . . Consular Affairs on applications and procedures for citizens of countries such as {Host Country}. There were delays in issuance as we sought guidance from the Department in how to implement its new policies. The Department was still setting up systems to process congressionally-mandated security clearances. I issued visas for {Host Country} Presidential entourage in an official visit to the US in record time, expediting the name checks and clearances. I came in on the weekends to issue visas to security personnel who needed to travel urgently to the US for counter-terrorism meetings. I did ask first whether they had to travel before the opening of business on Saturday (first day of the work week in {Host City}). I did not want to call in staff on weekends, requiring overtime pay and lengthy trips to the Embassy, unnecessarily. I do not believe that is being unresponsive, but responsible.

Grievant maintains that during the investigation of her grievance, the Department solicited statements from a number of her colleagues in {Host City} during the rating period, but then chose to rely wholly on the statements of the DCM, Ambassador and an individual who was not even at post until seven months after grievant had left. Grievant herself has submitted numerous statements from colleagues, support staff and FSNs.⁶ Several of these conflict with the DCM’s opinion of a professional relationship between

⁶ Foreign Service Nationals

the Ambassador and {Name 1}, especially that of {Name 4}, a Front Office Secretary, who said {Name 1} was constantly telephoning or stopping in to see the Ambassador.

Grievant disagrees with the Department's position that even if an inappropriate relationship existed, "a skilled supervisor would be able to rise to various supervisory challenges and handle difficult situations/relationships effectively." She avers:

The Department offers no support for this assessment of what a 'skilled supervisor' would have done differently in my position. I have provided the Board with evidence that shows that I was confronted with a very difficult employee, under very difficult circumstances. The management challenges the ETCS presented were compounded by the actions of the Front Office, which, by providing unfettered access to the ETCS and accepting inaccurate and unsupported criticisms of my management from the ETCS, repeatedly undermined my ability to fulfill my supervisory duties. The Department's position in this regard defies logic. [It] is suggesting that a rater and reviewer can through their actions create a situation in which management of an employee is very difficult, and then criticize the rated employee for not handling the situation better

In a similar vein, grievant disagrees with the agency's claim that statements of her rater and reviewer were the more persuasive, which it bases on an unidentified previous Board decision finding that an employee's supervisor is in a better position to evaluate performance in the context of the broader picture and the impact of the employee's actions and inactions on the organization. Grievant asserts that the central issues involved here are her management of {Name 1} and her interaction with others at the Embassy. While she believes her strained relationship with the DCM and Ambassador contributed to their inaccurate and prejudicial evaluation of her performance, with regard to her management of {Name 1}, statements of those who observed them daily in the consular section are more probative than {Name 1's} highly questionable second-hand reports to the DCM and Ambassador. To accord statements by a rater and reviewer

greater weight simply because of their higher status is not supported by Board precedent, otherwise it would be impossible to successfully grieve their statements in EERs.

She disagrees with the Department's position that the {Year} SB did not base its low ranking decision, based on managerial and interpersonal skills, solely on grievant's {Year} EER. Grievant argues that the Department is failing to grasp the effect on the SB's Low Ranking Statement if her grievance appeal is successful. A low ranking based on an EER found to be false and inaccurate must be removed from her performance file.

The Department

Because the comments by the Rating and Reviewing Officers were similar, the Department's decision letter dealt with the grievance issues topically, quoting extensively from statements obtained from DCM {Name 2} and Ambassador {Name 3}. Based largely on their comments the Department found that their statements in the contested EER were not inaccurate or falsely prejudicial. The agency stands by its decision letter in grievant's appeal. The structure of the decision letter requires extensive quotations in presenting the agency's position.

Integration of the ETCS

The Department asked DCM {Name 2} about his knowledge of a relationship between Ambassador {Name 3} and {Name 1} and any comments on it:

Friendly, professional, helpful. {Name 1}. . . the Civil Service employee, had served at only one other foreign post, as I recall, somewhere in the {Host Country} world, but not as difficult a post as {Host City}. The Ambassador tried to make her feel welcomed, as he did all new staff.

Yes, one or two colleagues came to me and remarked how they had seen the Ambassador and the Civil Service employee at social functions and hinted at some kind of impropriety. I checked discreetly. The Ambassador had invited {Name 1} on an occasion or two to official dinners because of her fluency in French. The Ambassador also included {Name 1} in occasional

day-trips outside of {Host City}. I should explain that because of the security situation, it was very difficult to travel securely around {Host Country} at the time. For morale the Ambassador and I took turns leading trips -- hiking, visiting interesting archaeological sites, villages and small towns -- on weekends with the requisite security to help get our hard-working American staff out of the Embassy and {Host City}. We had no CLO; the Ambassador and I were the CLO. It was a great stress-reliever. {Host Country} is a unique, wonderful country with much of interest and I wanted those working in the Embassy with any inclination to do so to have an opportunity to explore {Site} [sic], but securely. {Name 1} participated in some of these group trips. I concluded that there was nothing amiss in the Ambassador inviting {Name 1} to official dinners or to participate in group day trips outside of {Host City}.

On whether the DCM had any reason to believe the Ambassador's relationship with {Name 1} hampered his ability to be objective about grievant's performance when preparing her review statement, {Name 2} replied:

No, I don't think so. He was aware of the strained relationship between {Grievant} and the Civil Service employee. I believe I mentioned to him on a couple of occasions that I was trying to improve their working relationship and I may have told him that {Name 1} had come to me in private on more than one occasion asking to curtail her excursion assignment but I had persuaded her to stay a little longer and give {Host City}, the Consular Section, and {Grievant} a chance.

{Name 5}, the Consular Officer who replaced grievant in {Host City} stated:

I knew that they had known each other before arriving in {Host City} and were friendly. In my observations of them, they were professional in their interactions.

Regarding grievant's allegation that {Name 1} was not discussed during the October 31, {Year} counseling session, {Name 2} replied:

No, I think we discussed the Civil Service employee's dissatisfaction with her assignment, specifically the problems in their working relationship, at many of our weekly meetings, even predating the October 31 counseling session. I don't have my notes of our meetings and so cannot reconstruct a chronology of our meetings and so cannot give specific dates. {Name 1} came to me three times, I believe, very, very upset and exasperated, to request a curtailment. She stated it was impossible to work with

{Grievant}, her supervisor, who did not treat her respectfully, who did not treat her equally with the other American staff, and who criticized her forcefully in front of the FSNs causing her to lose respect in front of her {Host Country} colleagues in the Consular Section. I counseled {Name 1} to be patient, told her I would check into this with her supervisor, and asked her to reconsider her curtailment requests. I raised these issues with {Grievant}. Who denied at first there was a problem, that {Name 1} was exaggerating the issues. I brokered a meeting between {Name 1} and {Grievant} in my presence where I hoped some of the issues, differences of points of view would be aired dispassionately in hopes of establishing some sort of truce, some sort of respectful professional relationship. I counseled {Grievant} on several occasions about supervising Carolina, but often felt I was talking to a stone wall. I tried to make the point to {Grievant} that with American employees it was especially important to praise in public and critique in private, so that in a culture as face-conscious as {Host Country}'s {Host Country} culture is, the American officer would not appear diminished in front of {Host Country} colleagues or the {Host Country} public. As I stated in the 'interpersonal section' of the EER rating statement, this was one area where I assessed {Grievant} could have done better.

On whether grievant had sought his guidance regarding {Name 1's} supervision, the DCM stated:

No . . . I not {Grievant}, first raised the issue of supervision of the Civil Service employee. Even before the Civil Service employee arrived at post, I asked {Grievant} to start thinking about how she would integrate this employee (and the JO) into the section and supervise them both. I insisted that this be added to the work requirements statement as I thought that this was quite important in the overall management/supervision of the Consular Section.

. . .

I offered {Grievant} some advise on how to better supervise the Civil Service employee, such as not critiquing in public, but sometimes had the feeling that she was not truly hearing what I was saying. {Grievant} was responsive to another suggestion after a while in thinking through and coming up with a long-term leave schedule of her section.

Ambassador {Name 3} stated:

The ETCS (sic) in question complained that {Grievant} impeded the performance of her duties by restricting her access to information or to consular systems needed to do her job. She also felt that {Grievant} created

a somewhat hostile, as opposed to a collegial, environment in the section. One issue – as I recall – was delay and difficulty in designating a permanent work space [sic]. Her complaints were made credible by {Grievant's} reluctance to designate an officer to be in charge of the section during her absence which I read as {Grievant's} lack of confidence in her section's chain of command.

Asked to characterize her relationship with the Ambassador and {Name 1},

{Name 5} stated:

Ambassador {Name 3} and I have a supportive, professional relationship. He has given me a lot of autonomy to lead and manage the consular section and the officers under my supervision.

{Name 1} and I had a good, professional relationship. She was one of the more experienced officers in the section when I arrived and was helpful to me as I learned the lay of the land in my first few months at post.

Responsiveness to Non-Consular Colleagues

Asked to comment on grievant's allegation that he could not cite examples to support his assertion that consular was not being helpful to Embassy staff or supportive of the Country Team, {Name 2} responded:

No, I'm sure I gave examples and I wish I had my notes of the discussion to cite them. I recall pressing {Grievant} to get a revised visa referral system in place after 9/11 so all staff would be clear what to do. Eventually a revised visa referral memo was drafted, tweaked and issued, but the bulk of the work on this was done, I believe, by the JO in charge of the Consular section during one of {Grievant's} absences from post. Although I don't remember now the details of the various complaints I got from others in the Embassy about the Consular Section's sometimes lack of responsiveness to their queries, the gist of them was that it was like asking 20 questions of {Grievant} to get a straight answer. When she was absent from post and someone else was in charge of the Consular Section I received few or no complaints.

The DCM said examples of "{Grievant's} terse manners" were:

- No response to colleagues' queries.
- Partial, incomplete responses to colleagues' queries.
- Delayed responses to colleagues' queries.
- Monosyllabic responses to colleagues' queries.

- Habit of continuing with her work at her desk, head sunk in to the files, not looking at the person trying to converse with her.
- Feeling of having to play ‘20 questions’ to get relevant information from her.
- Not going out of her way to volunteer information to colleagues, always waiting for them to come to her and ask.

When asked if he had ever experienced grievant being terse, the Management Officer in {Host City} during grievant’s rating period, {Name 11}⁷ replied: “Terse, no. I would characterize {Grievant} as blunt and forthright.”

Ambassador {Name 3} commented on the quality of service and examples of when grievant could have placed greater emphasis on teamwork and sympathetic attention to services required by other members of the Country Team:

{Grievant} created significant tensions in the Country Team [sic] by often adopting negative or uncooperative attitudes to reasonable requests to facilitate consular service. For example, counter terrorism was the Embassy’s primary mission during this period. This entailed an extensive training program for {Host Country} security forces, including the military. Some of this training had to take place in the U.S. The Office of Military Cooperation had the duty to arrange this training and the reasonable expectation that the Consular Section, within the limits of law and regulation, facilitate issuance of visas to trainees. In striking contrast to her successor, {Grievant} made little apparent effort to facilitate such visas. On the contrary, she adopted an attitude that discouraged Members of the country [sic] team [sic] from asking for assistance. This was apparently a personal, not a systemic [sic] problem, because it evaporated after {Grievant’s} departure.

Designation of Acting Chief

DCM {Name 2} stated:

One thing I tried to stress with all the section heads I supervised (Consular, Management, RSO, and Health Unit, because the other sections – PAO, ECON, and POL - . . . did not have much permanent staffing during this period) was the necessity to plan ahead in scheduling leave of American colleagues and to identify in advance who would be in charge when the

⁷ No relation to grievant.

section head was away from post. This is a pretty basic good management practice and was especially important for {Host City} because of our dicey security situation and post's high profile back in Washington after the {Terrorist Event} and 9/11. I wanted not only those working in the concerned section, but the rest of the Embassy, and that section's key interlocutors (mostly by e-mail) back in the Department to know who would be in charge of the various sections for obvious good management reasons. The heads of the Management, RSO and Health unit sections had no problem doing this;

{Grievant} did. I knew she was trying to decide in this particular instance between the JO, the Civil Service employee, and the Consular Assistant as her backup to be in charge when she took leave. She could not seem to come to a decision. I had learned from previous occasions that {Grievant} often rather late designated her backup. It was only fair for the acting in charge, the rest of the Consular Section, Embassy colleagues, the front office, and Washington to know. I got no designation to my e-mail and oral requests to {Grievant} to designate someone as her leave dates approached. I told {Grievant} I would sign her leave slip when she informed me of her designation, but not before. Eventually, she did designate someone, the day or two before her departure, as I recall.

Ambassador {Name 3}:

The DCM and {Grievant} had difficult relations. A case in point was the DCM's request that {Grievant} name one individual to be in charge of the Consular section during her leave before approving that leave. I believe that request to be a legitimate one and consistent with the principle of 'unity of command' at the section level. {Grievant} refused the DCM's request and came to me for relief. I backed the DCM. Finally, she agreed reluctantly, but only after creating unnecessary tensions between herself and the front office.

...

I met with {Grievant} a number of times and listened to her side of the story. I recall on naming a consular 'charge' she feared there would be resentment or disappointment by others. Nevertheless, I thought the DCM's request to be reasonable, and I supported it. I personally found {Grievant} to be a difficult person to work with while I found the DCM to be exceptionally humane and patient

Asked whether the Ambassador attempted to influence his assessment of grievant's performance DCM {Name 2} responded:

No. As I had the most EER statements to write of anyone in the Embassy and the Ambassador was the reviewing officer for those I rated, I tried to keep him informed of the progress I made in drafting them. I know he was working on EER reviewing statements and we needed to marry them up in one document and the Ambassador needed to know which ones to expect next from me. {Grievant's} EER was one of the last I drafted, quite frankly, because it was one of the most difficult I have ever had to draft. She and I went back and forth several times on language in the evaluation of potential and area for improvement sections. Although I don't remember the details, I remember that the passages were toned down after our discussions, but probably still not to {Grievant's} liking. I tried very hard to be objective in rating {Grievant}, assessing her positively when merited. After I gave the final draft of the EER rating statement to the Ambassador, I do remember the Ambassador commenting to me that he thought I had written a fair EER in a difficult situation.

{Name 2} had this to say about his delay in preparing the counseling certification form:

I should have completed the . . . form more expeditiously. I plea [sic] overwork. {Host City} was severely understaffed during my year and a half there, especially the period of this EER rating period when security and our two authorized departures severely impacted State staffing. I, as DCM found myself doing the job of two, three, or four colleagues during most of that period. For example, the sole Public Affairs Officer was not replaced when he departed post early summer of {Year}. That job remained vacant the rest of my tour in {Host City}. Later in the period we begged Embassy Cairo to loan us one of their extra DOD contract public affairs officers for a short tour and they did. The sole economic officer at post curtailed shortly after 9/11 and I took on the economic section's portfolio and direct supervision of the two FSNs until we got WAE help late spring of {Year}. The sole political officer was away from post much of the time November {Year} to early spring {Year} and I had to cover the most important political matters as well and supervise the political section FSN. I recall the Ambassador returned to the US for {Host Country} President trip in November {Year}, I believe for about two weeks. I was Charge d' Affairs, DCM, acting PAO, acting Econ Officer, and acting Political officer that period, while at the same time begging the Department for TDY/WAE staff to fill our vacancies. I also had the primary responsibility for assisting, monitoring a demanding contingent of FBI Special Agents of [sic] TDY to {Host City} working with the {Host Country} government on the {Terrorist Event} investigation and post-9/11 investigations. They left around Thanksgiving {Year} but there was still much to do to follow up on some of their initiatives at post. Finally, post started to host an increasing number of TDY-ers' [sic] from other agencies after 9/11 to engage the {Host Country}

government on various counterterrorism initiatives. Their presence was suggested by the other agencies, vouched for and requested by post, and almost always approved by the Under Secretary for Management under our authorized departure status. There was a special, laborious procedure for doing this during an authorized departure period, which fortunately has been streamlined now, largely I think because of the lessons learned from {Host City}. Most evenings I had a dozen or so e-mail inquiries from the Department on prospective other agency TDY-ers' [sic] of requests to provide better justifications for their presence in {Host City} before the action memo would go to the Under Secretary for Management for approval. I had to track down specific answers for the Department. Keeping track of all these TDY-er's [sic] once they arrived at post, whose number reached over 120 during my tenure (about four to five times the number of permanently assigned staff we had on paper for the Embassy but never had in person) was a major effort, all centered in the DCM's office, i.e., my OMS and myself. To continue at this pace, I had to take a break and took some leave in December or January outside of {Host Country}. I think the Ambassador was away again for a few days at a COM conference and I was Charge again while wearing multiple hats during this period of November {Year} [sic] to February {Year}. And so I did not complete the form as soon as I should have. Although I did not complete it for a couple of months, I did take extensive notes and I referred to those notes in drafting it. I think it reflected accurately and completely the major topics discussed at the session, and was drafted in a constructive tone, again trying to give {Grievant} credit where credit was due and suggestions for improvement where I thought she could do better. I guess I felt that since we had had such a thorough counseling session at the time, other priorities took precedence before writing up the gist of the session.

The Department points out that although grievant took the opportunity in her EER employee statement to document her accomplishments, she did not directly address the criticism she is now contesting until her closing paragraph where she stated:

Finally, by mid-December the consular section had staffing more generous than it had ever had previously, with a junior officer on her first assignment, a consular associate and an excursion tour civil servant. In a time of chronic security threats and an enormously complex workload, integrating them into a working unit was a great challenge. I gave each of the three new American employees separate units to manage. Each was given the responsibility of introducing new procedural requirements to their units. All traveled on field investigations or official visits throughout the country. In doing so they acquired a degree of crosstraining and an appreciation for the diversity of consular work. This rating period has been troubled by a turbulent relationship with the DCM, with whom I frequently disagreed on

consular priorities. It is an area in which I intend to extend greater effort in the next rating period.

The Department notes that she did not grieve the EER until after she was low-ranked, two years later. The Department contends that the Low Ranking Statement's mention of comments from EER's prior to the one at issue here is relevant as demonstrating that it was not based solely on the contested EER and that just because she was not low ranked prior to {Year} is not evidence that comments from earlier EERs would have no impact on later SBs. It also points out that grievant was not low ranked in {Year}, even with the contested EER in her performance file.

The agency disagrees with grievant's position that the mid-October meeting that the DCM "brokered" between grievant and {Name 1} did not constitute a counseling session. Simply because the meeting was not formally labeled a counseling session does not mean that counseling did not occur.

It also discounts grievant's claims that it neglected to give any weight to statements from colleagues about the relationship between the Ambassador and {Name 1}. The agency maintains that the statements do not "... conclusively support that the relationship was not solely professional." Rumors and conjecture are not facts. In a previous decision the Department notes this Board ruled that an employee's supervisor has a stronger vantage point from which to evaluate an employee's performance, having knowledge of the broader picture of the individual actions and interactions of the employee and the impact of those actions on the organization. It also argues that:

Even if a relationship other than a solely professional one existed between the ETCS and the Ambassador and was the cause of, or contributed to, the difficulty of {Grievant's} supervisory responsibilities of the ETCS, a skilled supervisor would be able to rise to various supervisory challenges and handle difficult situations/relationships effectively. The record documents

that {Grievant} was not able to effectively handle the difficult relationship with the ETCS.

DISCUSSION AND FINDINGS

Pursuant to 22 CFR 905.1(a), in all grievances other than those concerning disciplinary actions, the grievant has the burden of establishing, by a preponderance of the evidence, that the grievance is meritorious. Based on a careful review of the Record of Proceedings, this Board finds that grievant has met that burden.

Integration and Management of the Civil Service Employee

Since all but two of the seven critical comments by DCM {Name 2} and Ambassador {Name 3} involve {Name 1}, we address the issues of her integration and management by grievant in the Consular Section first. {Name 7}, the locally hired American who headed the Consular Section's Fraud Prevention Unit, spoke of grievant's fostering teamwork, professionalism training and cross-training in a situation involving staffing shortages, increased workloads and security concerns. He also stated:

{Grievant} made sure to get input from officers and the local staff in matters such as the scheduling of services She also supported our work with other parts of the Embassy, such as supporting DS/RSO investigations, and promoting our cooperation with the INS.

{Grievant} maintained an 'open door' policy to personnel. She always listened to the concerns and suggestions of consular personnel while holding regular meetings with us to ensure that efforts towards common goals were coordinated and executed properly. [She] always encouraged us to strive for professionalism and efficiency in our day-to-day work while consistently being fair but firm in her judgment in personnel issues. Even when she found herself in a position where firm guidance or initial disciplinary action was needed, she always did it in private and without making anyone feel they had lost any stature or support from her or other personnel. She never raised her voice, lost control or spoke to anyone in the Section in a condescending manner

{Grievant} consistently approached personnel issues with personal, cultural and professional sensitivities in mind. In one incident, I had begun to explain the circumstances of a case to her in front of Vice Consul {Name 1} that involved a very young mother in an indiscrete [sic] manner. I can remember {Grievant} reminding me to be more sensitive about talking about 'young mothers' in front of Officer {Name 1} because she (Carolina) had been one. {Grievant} seemed to take her Junior Officers under her wing until they were prepared to deal with both the routine and often difficult circumstances in Consular Section Sana'a

. . .

When {Grievant} announced her abrupt departure from Post, we were not only shocked, but genuinely saddened. In times prior to and after {Grievant's} time . . . we worked with a large number of temporary-duty and permanent consular officers I can honestly say that we had not worked with anyone who inspired us to achieve on both an individual and team level more than Consul {Grievant} {Grievant} {Grievant} taught us professionalism, how to strive to achieve our goals, how to treat both the public and our colleagues with respect and how to earn theirs

{Name 8}, the Consular Secretary, provided a statement saying that grievant was calm, very approachable, hard working, routinely held meetings with the American employees after every Country Team meeting to keep them informed, and held an all-staff meeting once a month for airing concerns or presenting ideas for improvement, and ensured that staff members were recognized when merited. She did not recall any Embassy staff complaining about an appearance of consular unhelpfulness. Grievant welcomed all new employees and TDYers to the section, introduced them and spoke to them in private. She said DCM {Name 2} was a frequent Consular Section visitor, but their meetings were held privately in grievant's office. {Name 8} described grievant's relationship with {Name 1}:

Their relationship appeared on the surface to be cordial. On the arrival . . . of the excursion tour Civil Service employee, {Grievant} reviewed her first few letters regarding passport cases. Once satisfied with her writing abilities, she did not ask to see them anymore. {Grievant} gave her various responsibilities that she appeared to carry out well.

A few months later, in response to follow-up questions from grievant, {Name 8} responded as follows:

Did {Grievant} yell at {Name 1} in front of the FSNs causing her to lose face in front of {Host Country Nationals}:

[T]he Consular Section was pretty noisy – a lot of loud conversations going on at the consular windows between staff and members of the public It is my recollection that {Grievant} was probably the quietest person at the windows and was not given to shouting to get her point across. She never shouted at me and I don't recall her shouting at anyone I feel it would take a lot to provoke {Grievant} to shouting. As a general rule, if she had something personal to say to a member of staff, particularly the officers, she would talk to them in her office with the door shut in order to maintain privacy.

. . .

Was the atmosphere in the Consular Section hostile, not collegial:

I never felt that the Consular Section was hostile. For me, it was a fun place to be. Even though there was a constant flood of work and the Consular Section seemed to be rather short staffed, the day-to-day humor and light heartedness and respect of the people about me kept me going

. . .

Was {Grievant} uncommunicative to and aloof toward other Mission members and Embassy and Consular staff:

I did not feel that she was uncommunicative to Consular staff. She regularly briefed her American staff after country team meetings She would hold ad hoc staff meetings if there was anything important to announce. She would consult with the Consular officers and other Embassy officers in her office with the door shut. I did not notice if [she] was aloof or uncommunicative towards anyone. I believe it should also be brought into consideration that {Grievant} had an enormous workload I think she probably worked through most evenings. I think she usually got to the Embassy around 7:30 or 8am every day. And yet she never got impatient with me when I asked her a question or needed help with something.

In response to the Department's queries, Junior Officer {Name 9}, who arrived at post in December {Year}, stated:

Her management style was calm and patient. She was always open to questions and had a very good relationship with the FSN staff
{Grievant} is not a micromanager but she was always available when someone had questions or needed additional help.

. . .

I am not aware of specific examples when {Grievant} received complaints of unhelpfulness. However, I was once told that I was not being a team player regarding the issuance of NIVs requested by certain individuals. I explained very clearly that I was actually being very cooperative – and could cite specific examples of other offices I had helped – but that in the months following September 11, Consular regulations were changing on a daily basis and certain procedures had to be followed. There was a reluctance by certain staff members from other offices to realize that change was occurring regarding visa processes and at times, pressure was put on our section that had to be resisted.

. . .

I was asked by {Grievant} to act in her absence and accepted the responsibility. There was no reaction that I was aware of from the FSN staff. The Civil Service employee told me directly that she thought I should not have been placed in such a position, that she should have been given the responsibility but that there was nothing that she could do about that now. She was rather upset and reacted almost in a hostile manner.

Do you think that {Grievant} should have designated someone as 'acting' sooner (before her leave) than she did in either case? Please comment.

When I was asked to be acting, I asked {Grievant} why she selected me to be acting while she was away and she explained to me that she had wanted to give me some time to see if she felt I could handle the responsibility and that she had determined that I could fulfill the role during her absence. This was done before she left to go on vacation and it was put into my work requirements that I would then assume her responsibilities when she was away from post. [Emphasis in original]

While {Name 9} had no first-hand knowledge of grievant's relationship with the DCM or Ambassador, regarding the relationship with {Name 1} she said: "I believe they had a difficult relationship but this was not uncommon with the Civil Service employee.

What is your understanding of the relationship between the Civil Service employee . . . and the Ambassador?

I believe it was an unprofessional relationship.

. . .

The Civil Service employee was given a rather large award from the Ambassador upon her departure in late {Year} . . . for her leadership during and after the time of September 11. This grossly contradicted information I heard from the American community and the local staff regarding her performance during that time.

Regarding whether grievant's supervisory responsibilities were hampered by {Name 1's} relationship with the Ambassador, she replied "I believe it certainly made it more difficult." She added: "It is not any new information that the Civil Service employee in question has been incredibly difficult for numerous individuals to work with. Her close relationship with the Ambassador only made that more difficult."

{Name 12} was the WAE/TDY Consular Officer in the Consular Section from June 7-October 4, {Year}. She stated that prior to grievant's scheduled August {Year} leave, a civil service excursion tour individual was assigned to the section in an FS-03 mid-level position:

The officer was delegated as the officer-in-charge in absence of {Grievant}. It was understandable that this was a challenge. There were some tense moments and it seemed that constructive assistance was not welcomed. Upon [{Grievant's} return], she was informed by the officer that she decided to curtail her assignment and would plan to depart post as soon as possible. This decision was later reversed.

{Grievant} has been subjected to unwarranted criticism for a job well done under less than desirable circumstances. I would welcome the opportunity to work for and with her anytime in the future.

{Name 4} was the DCM's Office Management Specialist (OMS) during the period at issue and submitted the following statement for grievant:

From my point of view, it seemed that this Civil Service employee received preferential treatment by the Ambassador and Deputy Chief of Mission in defiance to {Grievant's} supervision.

The relationship . . . created such a complex situation that it was impossible for the DCM and the Ambassador to write a fair evaluation of {Grievant} and the management of the consular section. There were continual questions of {Grievant's} failure to 'manage' the Civil Service employee. However, from my standpoint and from the comments of her staff, {Grievant} was always on top of things and made sure her section was covered during her periods of absence. One time while {Grievant} went on leave, the Civil Service employee was made acting chief of the section. However, the Civil Service employee also took leave during part of that time and didn't put anyone else in charge or inform the Front Office of her leave. As it turned out, something came up and the JO that was left in charge of the section came to the Front Office wanting to know what to do. That is how we found out that the Civil Service employee had left town, even though {Grievant} had made arrangements that she . . . would be in charge.

The second time {Grievant} went on leave, she placed someone else in charge. Grievant} was supported by the Front Office in this decision due to the previous experience with the Civil Service employee. It wasn't until later that it became a major issue for the DCM and the Ambassador on why the Civil Service employee wasn't picked as the acting chief. The JO that was put in charge did a fabulous job, but the Civil Service employee was very upset with the decision.

I don't know the full extent of the relationship between the Ambassador and the Civil Service employee, but I do know that it was not a professional working relationship and there were many complaints/comments from other personnel in the Embassy who were questioning the 'relationship.' On several occasions I told the DCM of the comments going around the Embassy and was informed he would talk to the Ambassador. However, I believe that it was impossible for the DCM, who would have to protect the Ambassador, to discuss this with him.

With the Civil Service employee constantly calling the Ambassador on the phone, or stopping by the office, it made for a very difficult working environment for all concerned, including the OMS' in the Front Office. There were several occasions where the Civil Service employee said she needed to talk to the Ambassador or DCM about {Grievant}.

Even after {Grievant} departed post, the Ambassador instructed the new Consular Chief, who had only been working with [{Name 1}] the Civil Service employee for a few weeks, to put her in for a Superior Honor Award, which she received. Also, the negative remarks about {Grievant} from the Ambassador did not stop when she left. Several weeks after her departure, we had a Front Office staff meeting and the Ambassador made a derogatory remark about her taking more leave than anyone else in the Embassy. Since I was the timekeeper for all direct-hire Americans, I corrected him and told him that she was nowhere near that. He questioned me saying he was right and I then told him that as the timekeeper I have complete records for everyone and that the 'honor' went to the Civil Service employee. He just looked at me and changed the subject.

In another statement in response to Department inquiries, {Name 4} stated that {Name 1} saw the Ambassador several times to discuss her EER, but that she did not know to what extent the Ambassador assisted with the EER. Asked to explain the nature of comments going around on {Name 1's} relationship with the Ambassador, {Name 4} replied:

'What's going on between the Ambassador and Carolina?'
There was a general feeling of a sexual relationship between the Ambassador and {Name 1} by a lot of people at post prior to the Ambassador's wife arriving at post. However, no one seemed to have proof of that. I did have a conversation with a {Host Country}-American named {Name 11} that worked as the Security Assistance Officer for OMC who was having an intimate relationship with {Name 1} at the same time. He informed me that on one particular evening while they were at {Name 1's} home, she received a call from the Ambassador and {Name 1} wanted to know if he was jealous that the Ambassador was calling her.

...

{Name 1} had an attitude of defiance when she came to the Front Office and made it known that she had access to the Ambassador by her actions and statements, i.e. 'He asked me to see him.', 'He knows I'm coming.', 'He'll want to see me.', etc. – and he always did see her.

Please note that this issue for me has nothing to do personally with either the Ambassador or {Name 1}. What they do in private or in their personal life is between them. This is about {Grievant} who I strongly feel got caught in the middle because of {Name 1's} attitude and unwillingness to follow the chain of command and because she had the Ambassador's attention. I feel {Grievant} did everything she possibly could to maintain professionalism as {Name 1's} supervisor but was put down and chastised at every turn.

Food for Thought: If {Grievant} were any way at fault and such a failure at managing the CONS Section, it makes one wonder why no one else was complaining about her other than {Name 1}.

Regarding {Name 1}, {Name 11}, the post's Admin Officer stated that:

As a principle, I refrain from enjoining the 'rumor mill' in any of my assignments. That said, I am aware of the rumors that a Civil Service employee had a special relationship with Ambassador {Name 3}. I have absolutely no proof that this was true. The 'hallway chatter' also implied that the Civil Service employee received special attention and/or privileges from Ambassador {Name 3}. I have absolutely no proof that this was true. As a professional principle, I stayed out of this discussion.

...

I arrived in September {Year}. I always had the impression that the strained relationships that I saw manifested had their origins in events prior to my arrival and became exacerbated by further strains in the relationship between {Grievant} and the Civil Service employee. We were working in a dangerous environment, under extraordinary conditions, with inadequate staff to do all the work of the Embassy

Based on the extensive statements in the record, we are persuaded by a preponderance of the evidence that the familiar relationship between {Name 1} and the Ambassador made it impossible for grievant to "adjust her management style" to better integrate {Name 1} into the Consular Section. By all accounts, except for those of her rating and reviewing officers, grievant was an extremely hard-working, discreet, nurturing supervisor who provided guidance, counseling and training for her officers and staff. She was placed in the untenable position of supervising an inexperienced Civil

Service employee with interpersonal problems, who was out of her element, was unhappy with the work and the restricted security environment, and did not follow instructions. {Name 1} took unauthorized leave with impunity, and more annual leave than anyone else in the Embassy according to the Embassy time-keeper, and had “unfettered access” to the Ambassador and DCM. Grievant in turn received non-specific and, we find, unwarranted criticism in her EER by those same two officers for not rising to the occasion and doing a better job of integrating her.

We are persuaded that grievant’s difficulty in managing {Name 1} was a direct result of {Name 1’s} special relationship with the Ambassador. That he intervened in grievant’s drafting of her EER and directed that she receive a Superior Honor Award are uncontested and serve as further evidence of his favoritism toward {Name 1} and his animus toward grievant.

Consular Services to the Country Team

In the EER the DCM commented that with colleagues outside the Consular Section, grievant’s terse manner sometimes led to the perception that consular was not responsive to their concerns. The Ambassador opined that she could have been more productive with greater emphasis on teamwork and more sympathetic to consular services required by other members of the Country Team. The DCM did not document the counseling certification form until four months after the counseling session. It contains no reference to a terse manner and no illustrative examples of non-responsiveness. Grievant’s notes indicate that she asked him what he was talking about and requested examples, but he could think of none. The Ambassador states that his

comment was directed at grievant's apparent lack of effort to facilitate visas for the stateside training of {Host Country} security forces.

We find these criticisms unsupportable. Security checks and visa processing requirements were drastically changed in the wake of the terrorist attacks, especially so for Islamic visa applicants. Grievant could not issue visas any sooner than authorization was received from the Department, at least not without risking her job or criminal prosecution. Again, we look to statements in the record for the views of others on these issues.

The Embassy Admin Officer from July {Year} to August {Year} stated:

My impression, as one of her colleagues, was quite the contrary – that the Front Office repeatedly and publicly expressed their disregard for {Grievant's} efforts to correct improper practices in the Consular Section as well as for contributions in other areas {Grievant} could offer. For example, {Grievant} attempted to eliminate the common practice of American employees dropping off visa applications for contacts, along with the fees associated with them, on the desks of local employees, even when the local employees were not present to accept responsibility for handling the funds. When {Grievant} announced at a Country Team meeting that she wanted to improve accountability by having Americans bring the applications to the consular cashier for the initial processing, the Ambassador cut her off before she could complete her description with a comment along the lines that broken systems don't need fixing [sic]. This indicated to me that the Ambassador did not understand the vulnerability the practice posed to local employees for being accused, falsely or in fact, of mishandling the funds, not that {Grievant} was being unresponsive to the needs of the rest of us.

Another example . . . In June {Year}, the Marine Security Guard contacted me in the very early hours on a Friday (our Sunday equivalent . . .) to inform me that I was expected to attend an Emergency Action Committee meeting at 8 a.m. I do not know who else the Marine was asked to call. When we convened, {Grievant} wasn't yet present. By the time she arrived, however, the DCM realized she didn't have the same clearance level as the others in the meeting, so he sent her away without providing any explanation beyond the statement that she wasn't needed in the meeting after all.

In sum, I observed {Grievant} over the course of a year as she attempted to cooperate with all her colleagues, while the Ambassador and DCM responded often in a manner that gave the impression to both {Grievant} and others that they did not welcome or value her contributions or participation.

The next Admin Officer, {Name 11}, in a statement to the Department:

To the best of my knowledge, {Grievant} and the Consular Section did not receive complaints regarding an appearance of unhelpfulness, though I am sure there were many times when we were closed when the consular public may have been frustrated Also, I recall that there were cases where the requester or the referrer wanted a speedier visa, but the section had to wait for clearance cables from Washington. I also recall one in-service meeting wherein the section met to evaluate customer service and discuss ways of improving the customer service aspect of the work of the section.

. . .

To the best of my knowledge, {Grievant} welcomed new employees and discussed their work requirements with them. I know that she prepared well in advance to make sure appropriate work space was available to new employees, as I had a hand in planning this workspace and arranging for space reallocation in the section.

{Name 11} characterized grievant's relationship with the DCM and the Ambassador and "strained and cool."

{Name 12} was the WAE/TDY Consular Officer from June 7 to October 4, {Year} and offered the following:

{Grievant} was not given full credit for the exceptional work that she did. Regardless of the obstacle, limited officer staff, inefficient working environment, high volume of work much of which was fraud related, she is to be commended for her accomplishments. She was well respected by all her staff. Her management skills were quite adequate. Additional cooperation from other colleagues in the mission would certainly have been a major factor.

I believe had there been more positive cooperation from the other members of the Embassy her time could have been better utilized. It was not infrequent that other colleagues . . . would intervene with visa requests which were often found to be unacceptable. One case in which I was involved, was a request for favorable consideration given to an individual

who clearly demonstrated their ineligibility [sic]. Because the request could not be approved, I was asked to give a second opinion. The earlier decision could not be reversed and many hours were spent, telephone calls and e-mails to INS who had the final decision. During this time the Embassy was closed due to the events of September 11th and our office was working on emergency cases only, staff attendance was based on the need. Also, during the time the Embassy was closed an A referral from the Front Office was submitted with a recommendation to issue a NIV for an El Salvadorean [sic] maid employed by a UNDP representative. The request was denied by {Grievant}. She departed the next day on scheduled leave and since I was acting charge I was approached by the Front Office to reconsider. There was no valid reason for reconsideration and the request was denied.

[P]rior to the second scheduled leave of {Grievant}, a civil service excursion tour individual was assigned to post in a FS3 Mid-level position. The officer was delegated as the officer-in-charge in [{Grievant's}] absence It was understandable that this was a challenge. There were some tense moments and it seemed that constructive assistance was not welcomed. Upon [{Grievant's}] return, she was informed by the officer that she decided to curtail her assignment and would plan to depart post as soon as possible. This decision was later reversed.

{Grievant} has been subjected to unwarranted criticism for a job well done under less than desirable circumstances. I would welcome the opportunity to work for and with her anytime in the future.

{Name 13}, the Embassy's Regional Security Officer (RSO) from July {Year} to February {Year} stated:

During this period of time the embassy operated under a critical threat level due to the kidnappings of foreign nationals and rising threats to U.S. interests from Islamic fundamentalists in {Host Country}. In an effort to aid the {Host Country} Government deal with its terrorist problems, {Host Country} was participating in the Department of State's Anti-Terrorist Assistance Program (ATA). During {Grievant's} tenure as the Chief of the Consular Section, I had many opportunities to work with her in requesting consular record checks and issuing NIVs to {Host Country} Ministry of Interior officials selected to attend specific ATA courses in the United States. Unfortunately, though the {Host Country} were always advised to submit all necessary paperwork to my office within a 30 day time period, invariably their documents always arrived at the last minute. On the numerous occasions that I found myself imposing on {Grievant} and her staff at COB or even worse, the weekend, {Grievant} would see to it that the visas were issued on time.

I would also mention that due to the nature of {Host Country} record keeping (or lack thereof), I often found myself hunting through her visa files with her staff looking for information pertinent to investigative requests from other U.S. Government agencies. {Grievant} was always available, cooperative and sensitive to my section's needs and made my job that much easier.

{Name 7}, the Consular Section's local hire American, recalled that:

Even when she found herself in a position where firm guidance or initial disciplinary action was needed, she always did it in private and without making anyone feel they had lost stature She never raised her voice, lost control or spoke to anyone in the Section in a condescending manner. The only incident in which I can recall her raising her voice was while speaking to former DCM {Name 2}, who was trying to get her to expedite the issuance of non-immigrant visas that were being issued to a group of applicants that were, if I am not mistaken, either affiliated with or employees of the host government. If I recall correctly, the applications had not been completed properly after repeated attempts and could not have been efficiently processed in the state they were in. {Grievant} voiced her frustration after DCM {Name 2's} third or fourth visit to the Section that morning by saying something to the effect of, 'We just can't work that way!' {Grievant} and DCM {Name 2}, to their credit, subsequently went into {Grievant's} office to discuss the matter in private

We are satisfied that grievant and the Consular Section she headed were as helpful, responsive and cooperative as the changing situation and Department regulations allowed. Nothing in the record supports the DCM and Ambassador's generalized criticisms characterizing her as terse and unforthcoming. That is a falsely prejudicial conclusion.

Annual Leave Backup

Both the DCM and Ambassador faulted grievant for managerial shortcomings in February {Year} for not designating an acting head of section sooner or providing more adequate reasons for the delay. In addition to the statements by grievant, the DCM and Ambassador, we also have contemporaneous e-mail exchanges on the subject by grievant and officers in the Department to assist us in sorting out this issue.

On February 7 and 9, {Year} grievant e-mailed {Name 14}⁸ advising that she could no longer deal with the DCM's harassment style of management and had to get out. On February 11 {Name 14}⁹ replied that she herself had threatened the DCM with leaving post early because of his micromanagement. In addition, on February 9, grievant's Career Development Officer informed her that Mildred Patterson (Director, CA/EX) was willing to call the DCM or Ambassador to discuss the leave situation, since grievant was now talking about curtailing over the DCM's micro-management, perceived harassment, and the annual leave controversy.

Grievant's response indicated the DCM first insisted on February 3 that in addition to a regular duty officer, a consular officer also had to be on duty during the late February {Host Country} holidays and that his approval of her leave request was contingent on her naming an Acting Head of Section:

Of course, this will be done, but I am not ready to make this choice yet. Personality conflicts among American staff preclude making this decision hastily or lightly. In addition I do not want to make this sensitive decision unless leave is going to be granted and I have explained this to him.

The record contains several more emails, ending on February 19, helpful for background purposes, but unnecessary to detail here as they more or less repeat other parts of grievant's position.

There is no dispute that there were ongoing discussions about splitting the Acting Head of Section responsibilities because of the tensions that would result, regardless of who was designated. For the Ambassador to claim that the grievant refused to name someone is inaccurate. She named the JO. {Name 2} has never indicated the date on which he conditioned grievant's leave approval on her designation of an Acting Chief,

⁸ Former Management Officer at post, who was posted elsewhere at the time of this e-mail.

⁹ Former Management Officer at post, who was posted elsewhere at the time of this e-mail.

but grievant claims he did so on February 3, when he also informed her that he would not approve her leave until she both identified a consular duty officer for the local holidays and designated her back-up. {Name 2} has stated that he told grievant he wanted the designation in advance of her leave. There is nothing to indicate how far in advance he considered reasonable. We assume grievant named the JO on the date he signed her leave request, around February 18, {Year}. At this point the JO had been at post about two months and grievant did not go on leave until February 26. The DCM knew that grievant was confronted with a difficult choice: Designate the much higher ranked, but undependable and temperamental {Name 1}, or suffer potential negative fallout from naming the much lower ranked JO who showed promise. The DCM did not provide any guidance and instead conditioned grievant's leave approval on inappropriate demands. This necessitated that the Director of the Executive Office of Consular Affairs contact the Ambassador to resolve the situation, to the extent that it could be. We find criticisms of managerial shortcomings for failure to designate an Acting Head of Section sooner or providing more adequate reasons for the delay by the DCM and Ambassador to be falsely prejudicial. They will be struck from the EER.

Counseling

The DCM stated on the counseling certificate that he counseled grievant regarding {Name 1} on October 31, {Year}: "Need to be more sensitive to needs of new American employees and work harder at responsibly integrating them into the section – specifically {Name 1} now, and JO's [sic] in the future." We know that he did not draft and sign the counseling form until February 28, {Year}, after grievant had left on leave. Grievant's own signature on the form is dated April 20, {Year}. There is nothing in the

record to explain this delay – she returned from leave at the end of March. Her comments on the form state that they were prepared immediately after the counseling session and contain no reference to integrating {Name 1} or other Americans into the section. She alleges that is because she was not counseled on it. The Department now asserts that the mid-October meeting the DCM brokered with grievant and {Name 1} constituted a counseling session. We disagree. Grievant requested the meeting because she was having no success in trying to get {Name 1} to stop the loud confrontations with others and act professionally. We simply do not believe that he instead counseled grievant in front of {Name 1} on improving her supervisory techniques. We conclude that grievant was not counseled on this issue or in any way alerted to an alleged need to be more sensitive.

Were we to find that she was counseled at some point, we would still view the criticism as falsely prejudicial. Prior to {Name 1's} arrival, grievant's relations with the DCM were tense and cool. Unquestionably, {Name 1's} arrival marked the beginning of a further deterioration of the supervisor-employee relationship. The majority of the criticisms in the EER relate to {Name 1}, an inexperienced, temperamental Civil Service employee who took advantage of her special relationship with the Ambassador. For example, she had unrestricted access during office hours to him and the DCM. And she complained freely to both. She obtained the Ambassador's input for her EER and even received a Superior Honor Award based on his specific instructions to the new Consular Section Chief. We find that it is patently unfair to criticize grievant for a situation that the Ambassador created and the DCM allowed to continue. To argue that a skilled

supervisor would have been able to rise to the challenge and effectively handle this difficult situation is spurious.

We find that the Department's reliance on an unidentified previous Board decision holding that an employee's supervisor has a stronger vantage point from which to evaluate performance than statements of grievant's colleagues is inapposite here. We believe the appeal in question is FSGB Case No. 2000-057, January 19, 2001, involving alleged animosity resulting in a falsely prejudicial, procedurally deficient EER, low ranking and selection out. In that case, grievant submitted statements of support from three employees he supervised. The Department argued that:

[T]he staff view of grievant's supervisory ability should not be substituted for that of grievant's supervisor. It noted that 'the view from the bottom up' is significantly different than the perspective through which a supervisor views a subordinate's ability and 'does not necessarily have a relationship to the supervision expected from a supervisor by his/her superiors to attain . . . desired goals'

While the Board agreed with the agency that the view of supervision looking up may differ markedly from the assessment looking down, without undermining the latter's accuracy or objectivity from that perspective, it found this on very limited grounds: that none of the three subordinate employees offering grievant support statements had had recent experience in the geographic area involved, lending support to the rater/reviewer judgment that closer supervision was called for. The EER was expunged on other grounds. That is not remotely similar to the situation we are addressing here. Grievant's colleagues, subordinates, Embassy staff and FSNs were universally supportive of her management, guidance, training, and interpersonal skills several years after the events at issue, whether she or the Department solicited their statements. Their comments were specific, clear, and often included examples in contrast to the generalized, critical

statements by the DCM and Ambassador. And, several of them were certainly in positions to observe how grievant was being treated and what {Name 1} was doing. We credit their evidence over that of the Ambassador and DCM.

An EER need not be perfect to be acceptable; it need only meet reasonable standards of completeness, balance, accuracy, and documentation.¹⁰ We find that this EER does not meet that standard. Grievant has carried her burden to prove that her grievance has merit. We hold that the rater and reviewer were biased against grievant to the point that they were unable to provide a fair and reasonable assessment of her performance or potential. The similarity of their critical comments, sprinkled throughout pages 4 and 5 of the EER, has not gone unnoticed by the Board. Expunging the grieved language of the EER will result in the absence of a required section IIIC (Area for Improvement), as well as gaps in other parts of the evaluation. We therefore hold that the entire EER shall be removed from grievant's performance folder.

With the expunction, the low ranking of the {Year} Selection Board which relied heavily on the evaluation, must be set aside. Grievant will be mid-ranked with a standard gap memo for the rating period and her time in class will be extended by one year as compensatory.

DECISION

The grievance appeal is sustained. The Department of State is directed to:

1. Expunge from grievant's performance folder and any other Department records the EER covering her performance from April 16, {Year} to April 15, {Year};
2. Nullify grievant's low ranking by the {Year} Selection Board;

¹⁰ See for example, FSGB Case No. 99-080, July 13, 2000; FSGB Case No. 99-034, December 3, 1999

3. Issue a standard gap memorandum and mid-rank grievant for the period of performance;
4. Extend grievant's time in class by one year
5. Correct all agency records to reflect the above actions.
6. Advise the Board within 45 days of receipt of this DECISION to confirm that the ordered actions have been accomplished.