UNITED STATES OF AMERICA
BEFORE THE
FOREIGN SERVICE LABOR RELATIONS BOARD
WASHINGTON, D.C.

UNITED STATES INFORMATION AGENCY

(Respondent)

and

Case Nos. 3-CA-20356(F)
and
3-CA-20766(F)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1812, AFL-CIO

(Charging Party/Union)

ORDER

By Joint Motion the United States Information Agency (Respondent) and American Federation of Government Employees, Local 1812, AFL-CIO (Charging Party/Union) moved the Foreign Service Labor Relations Board that the above-entitled cases be deemed settled with prejudice and that they be dismissed as fully compromised and settled, the terms of such being set forth in the Joint Motion. On the basis of such motion and the settlement of the cases, the General Counsel has moved that they be remanded to the Regional Director for appropriate disposition. On the basis of the above, the cases are hereby remanded.

For the Foreign Service Labor Relations Board.

Issued, Washington, D.C., October 14, 1983

by Harold D. Kessler
James J. Shepard, Executive Director

UNITED STATES OF AMERICA
FOREIGN SERVICE LABOR RELATIONS BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424

DATE: March 25, 1983

MEMORANDUM TO: The Foreign Service Labor Relations Board

FROM: WILLIAM B. DEVANEY WBD
Administrative Law Judge

SUBJECT: UNITED STATES INFORMATION AGENCY

Respondent

and

Case No. 3-CA-20766(F)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1812, AFL-CIO

Charging Party

Pursuant to Section 1423.26(b) of the Regulations, 22 C.F.R. § 1423.26(b), I am hereby transferring the above case to the Board. Enclosed are copies of my Decision, the service sheet and the transmittal form sent to the parties. Also enclosed are the trancript, exhibits, briefs filed by the parties, and additional copies of my Decision.

Enclosures

UNITED STATES OF AMERICA
FOREIGN SERVICE LABOR RELATIONS BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424

UNITED STATES INFORMATION AGENCY Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1812, AFL-CIO Charging Party	Case No. 3-CA-20766(F)

NOTICE OF TRANSMITTAL OF DECISION

The above entitled case having been heard before the undersigned Administrative Law Judge pursuant to Chapter 10 of the Foreign Service Act of 1980 and the Rules and Regulations of the Foreign Service Labor Relations Board, the undersigned hereby serves his Decision, a copy of which is attached hereto, on all parties to the proceeding on this date and the case is hereby transferred to the Foreign Service Labor Relations Board pursuant to 22 C.F.R. § 1423.26(b).

PLEASE BE ADVISED that the filing of exceptions to the attached Decision is governed by 22 C.F.R. §§ 1423.26(c) through 1423.29, 1429.21 through 1429.25 and 1429.27.

Any such exceptions must be filed on or before April 25, 1983, and addressed to:

Foreign Service Labor Relations Board
Room 217
500 C Street, SW.
Washington, DC 20424

William B. Devaney
WILLIAM B. DEVANEY
Administrative Law Judge

Dated: March 25, 1983
Washington, DC

UNITED STATES OF AMERICA
FOREIGN SERVICE LABOR RELATIONS BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C. 20424

UNITED STATES INFORMATION AGENCY Respondent and AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 1812, AFL-CIO Charging Party	Case No. 3-CA-20766(F)

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For Charging Party

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For Intervenor
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Susan Z. Holik, Esquire
For Amicus Curiae,
American Foregin Service
Association

Before: WILLIAM B. DEVANEY
Administrative Law Judge

DECISION

Statement of the Case

This is a proceeding under Chapter 10 of Foreign Service Act of 1980, P. L. 96-465, 94 Stat. 2071, 2128, et seq., 22 U.S.C. § 4101, et seq.,[1/] and the Final Rules and Regulations issued thereunder, 22 C.F.R. § 1423.1, et seq. The charge herein was filed on September 13, 1982 (G.C. Exh. 1(a)) and a First Amended Charge was filed on October 6, 1982 (G.C. Exh. 1(d)), each charge alleging violations of §§ 1015(a)(1), (5), and (6) of the Act. The Complaint and Notice of Hearing issued on October 27, 1982, for hearing, seriatim with Case No. 3-CA-20356(F), on December 7, 1982. Pursuant thereto, hearing was duly held on December 7, 1982, in Washington, D.C. before the undersigned on Case No. 3-CA-20356(F); but, because of the time required for Case No. 3-CA-20356(F) and the unavailability of a witness in this case on December 7, 1982, the hearing herein was held on December 8, 1982.

On December 3, 1982, the United States Department of State filed a Motion to Intervene which, pursuant to § 1423.22(b) of the Rules and Regulations, the Regional Director referred to this Office by Order dated December 6, 1982; and, at the commencement of the hearing the Motion to Intervene, which was not opposed, was granted (Tr. 6). On December 15, 1982, the American Foreign Service Association filed a Motion to Intervene which was denied by Order dated December 16, 1982; however, leave was granted to the American Foreign Service Association to file a post-hearing brief as amicus curiae.

All parties were represented at the hearing, were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues involved, and were afforded opportunity to present oral argument. At the close of the hearing, I particularly requested, inasmuch as Respondent concedes that it refused to comply with the Order of the Foreign Service Impasse Disputes Panel, that the parties, and especially the General Counsel and Respondent, submit proposed findings and proposed conclusions of law, whether or not briefs in support thereof were also filed, and January 10, 1983, was fixed as the date for filing, which time was subsequently extended,

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1/ Chapter 10 of the Act begins with Section 1001, which is Section 4101 of the United States Code. For convenience of reference, and for consistency, references herein will be to the Act, e.g., Section 1010 of the Act. "Foreign Service Impasse Disputes Panel", which is Section 4110 of Title 22 of the United States Code, will be referred to as Section 1010 of the Act; and Section 1015, "Unfair Labor Practices", which is Section 4115 of Title 22 of the United States Code, will be referred to as Section 1015 of the Act.

upon timely motion filed by Respondent which was not opposed, for good cause shown, and specifically delay in receipt of the transcript, to January 28, 1983. Each party has timely filed proposed findings and conclusions, and/or a brief,[2/] which have been carefully considered. Upon the basis of the entire record, I make the following findings and conclusions:

FINDINGS

1. American Federation of Government Employees, Local 1812 (AFL-CIO), hereinafter also referred to as "AFGE", is the certified exclusive collective bargaining representative of the Foreign Service employees of United States Information Agency, hereinafter also referred to as "USIA" or "Respondent."

2. American Foreign Service Association, amicus curiae, hereinafter also referred to an "AFSA", or "amicus curiae" is the exclusive bargaining representative of Foreign Service employees of the Department of State, hereinafter referred to as the "Department" or "State", and of the Agency for International Development, hereinafter also referred to as "AID". AFSA in its Brief states that,

> ". . . Because of USIA's . . . refusal to abide by the Order of the Foreign Service Impasse Disputes Panel . . . employees in the Department of State . . . and the Agency for International Development . . . for whom AFSA is the exclusive representative have never received presidential awards which they would have otherwise received, as provided in section 405 of the Foreign Service Act of 1980. . . .[3/]

2/ United States Information Agency, Respondent, and the Department of State, Intervenor, submitted joint proposed findings and a joint Brief. The Agency for International Development noted its appearance of Counsel on the Brief. Attached to the Brief of Respondent - Intervenor is a document marked Appendix "A". On February 8, 1983, Counsel for General Counsel filed a Motion to Strike Appendix "A" and the footnote reference thereto at page 23 n.68 of the Brief. The document in question was not offered as an exhibit at the hearing and, as General Counsel notes, the cover sheet shows an expiration date of October 20, 1979. Accordingly, the Motion of the General Counsel is granted and Appendix "A" is hereby striken and will be given no consideration.

3/ State and AID, inter alia, made performance pay awards pursuant to Section 405(b)(1) of the Act in fiscal year 1982; but not pursuant to Section 405(b)(3) inasmuch as USIA, as more fully shown in Case No. 3-CA-20356(F), refused to sign Foreign Affairs Manual Circular No. 81

(continued)

". . . Further, the Department has made it clear that it has indefinitely deferred proceedings for ever making such awards [Presidential Awards] pending the outcome of the dispute between the American Federation of Government Employees Local 1812 . . . and USIA . . . ." (Amicus Curiae Brief, pp. 1-2)

3. In September 1981, USIA and AFGE began negotiations concerning the 1981-82 Foreign Service selection boards provided for by Section 602 of the Act.4/

4. After about 15 bargaining sessions, USIA and AFGE reached agreement on some issues but were in disagreement regarding the functioning of the selection boards for promotions and for performance pay.

(continued)

which, inter alia, provided for an Interagency Selection Board and Section 405(d) of the Act provides, in part, that:

". . . Recommendations by the Secretary of State under this subsection shall be made on the basis of the recommendations by special interagency selections boards. . . ."

4/ Section 602 provides, in part, as follows:

"Sec. 602. SELECTION BOARDS. - (a) The Secretary shall establish selection boards to evaluate the performance of members of the Senior Foreign Service and members of the Service assigned to a salary class in the Foreign Service Schedule. Selection boards shall, in accordance with precepts prescribed by the Secretary, rank the members of a salary class on the basis of relative performance and may make recommendations for -

"(1) promotions in accordance with section 601;
"(2) awards of performance pay under section 405(c)

. . . ."

Section 405(c) provides as follows:

"(c) The Secretary shall determine the amount of performance pay available under subsection (b)(2) each

(continued)

Accordingly, on October 26, 1981, AFGE petitioned the Foreign Service Impasse Disputes Panel, hereinafter also referred to an "FSIP", for assistance in resolving the issues at impasse.

5. In accordance with FSIP's directions, the parties met in mediation and were able to resolve their differences over the promotion issues; however, they were unable to resolve the performance pay issue and, pursuant to FSIP's directions, the parties exchanged final proposals, position statements and rebuttal briefs regarding the performance pay dispute. During the course of written submissions to FSIP, USIA declared certain portions of AFGE's proposals to be non-negotiable. AFGE's proposals which USIA declared non-negotiable were as follows:

(continued)

> year for distribution among the members of the Senior Foreign Service and shall distribute performance pay to particular individuals on the basis of recommendations by selection boards established under section 602."

Section 102(a)(10) of the Act, Definitions, provides:

> "(10) 'Secretary' means the Secretary of State, except that (subject to section 201) with reference to the exercise of functions under this Act with respect to any agency authorized by law to utilize the Foreign Service personnel system, such term means the head of that agency."

Section 202, Other Agencies Utilizing the Foreign Service Personnel System, provides, in part, as follows:

> "(a)(1) The Director of the International Communication Agency [now USIA] . . . may utilize the Foreign Service personnel system . . .
>
> "(b) Subject to section 201(b) -
>
> (1) the agency heads referred to in subsection (a) . . .
>
> . . .
>
> shall in the case of their respective agencies exercise the functions vested in the Secretary by this Act."

1. Composition of the selection board for performance pay shall include career foreign service officers.

2. The total amount of performance pay to be awarded will be determined by the Director prior to the convening of the selection boards.

3. The recommendations of the selection board will be binding on the Director (Jt. Exh. 7A).

6. By letter dated April 1, 1982, FSIP, pursuant to Section 1429.4 of the Regulations, requested the Foreign Service Labor Relations Board, hereinafter referred to as the "Board", to issue a ruling with respect to major policy issues which had arisen in this case as the result of USIA declaring certain proposals of AFGE non-negotiable. Specifically, the issues, as stated by FSIP, were:

"1. Do sections 405 and 602 of the Foreign Service Act of 1980 (the Act) permit negotiations concerning the composition of selection boards established to make recommendations concerning performance pay, or are such negotiations inconsistent with section 1005 of the Act?

"2. Does section 405 of the Act vest in the agency head the sole right to determine not only the total amount of performance pay available for distribution but also the timing of the determination and the apportionment among the classes of the Senior Foreign Service?

"3. Does section 405 of the Act which provides that the agency head 'shall distribute performance pay to particular individuals on the basis of recommendations by selection boards established under section 602' permit the agency head to be bound by such recommendations?

7. On June 4, 1982, the Board, in Case No. FS-PS-1, issued an Interpretation and Guidance in which it concluded that each of the three issues at impasse were negotiable. The Board noted that,

"With its request, the Panel forwarded to the Board its entire record in Case 82 FSIDP 3 which contains statements from the parties before the Panel, as well as from the American Foreign Service Association and the Department of State. The Union filed a response to the State Department's submission. These statements have been carefully considered by the Board so

that the Board's interpretation of the Act which follows specifically relates to the record which was developed before the Panel, such additional guidance as is included is confined to the context of the bargaining proposals at impasse." (Case No. FS-PS-1 at p. 2; Jt. Exh. 11, Attachment).

8. With respect to Issue 1, the Board stated,

". . . it is concluded that sections 405 and 602 (footnotes omitted) of the Act permit negotiations concerning the composition of the selection boards established to make recommendations concerning awards of performance pay." (Case No. FS-PS-1 at pp. 2-3; Jt. Exh. 11, Attachment).

In stating its reasons therefor, the Board, in part, noted:

"Section 405 of the Act . . . states in subsection (c) that the agency head (footnote omitted) shall distribute performance pay to particular individuals on the basis of recommendations by selection boards established under section 602. Section 602(a) provides that the agency head shall establish the selection boards; subsection (b) requires that the boards include public members and a substantial number of women and members of minority groups. Thus, section 602 commits the establishment and composition of the selection boards to the discretion of the agency head subject only to the specific requirements of subsection 602(b).

"As to such discretion, under the Federal Service Labor-Management Relations Statute (the C.S. Statute) the Federal Labor Relations Authority (FLRA) has consistently held that to the extent an agency has discretion with respect to a matter affecting conditions of employment of its employees, which discretion is not required to be exercised solely and exclusively by officials of the agency, that matter is within the duty to bargain consistent with applicable law and regulations. National Treasury Employees Union, Chapter 6 and Internal Revenue Service, New Orleans District, 3 FLRA 747, 759-60 (1980).6/ In

6/ Under section 1007 of the Act, decisions of the Board must be consistent with decisions of the Authority except when the Board finds that special circumstances require otherwise.

this regard, sections 405 and 602 of the Act do not, on their face, prescribe that the discretion to establish selection boards is to be exercised solely and exclusively by the Secretary; the exercise of that discretion through negotiations over the composition of the boards, therefore, would not be inconsistent with the language of these sections.

"Furthermore, the foregoing interpretation finds support in the legislative history of the Act. Specifically, H. R. Rep. No. 96-992, Part 2, 96th Congress, 2d Sess. (1980), discusses at page 101 the relationship of the management rights section to the selection boards established in chapter 6: (id. at pp. 4-5).

. . .

Thus, the Report . . . states that, except for matters specifically reserved to management under section 1005(a) -- i.e., the right 'to determine the number of members of the Service to be promoted and to remove the name of or delay the promotion of any member' for certain limited reasons -- the composition of the selection boards is negotiable . . . Thus, it is concluded that Congress did not intend to grant the head of the Agency sole and exclusive discretion to determine the composition of the selection boards; rather, Congress intended such discretion to be subject to collective bargaining.

"In this connection, the position taken by the Department of State during a joint hearing of sub-committees of the House Committees on Foreign Affairs and Post Office and Civil Service, is not inconsistent with this conclusion . . . (id., at p. 5).

. . .

Further, in this connection, it must be noted that the State Department had negotiated with the unions prior to the passage of the Act, 'The Agreement for the Establishment and Composition of Selection Boards,' which governed the composition of the boards at the time the quoted testimony was given. Thus, in that context, by stating that recommendations concerning awards of performance pay would constitute an additional duty of those boards and that management and labor must agree on their membership, the Department, in effect, represented to the House subcommittees that the composition of the selection

boards would, for performance pay purposes, be subject to negotiations.

"Based upon the foregoing, it is concluded that, under sections 405 and 602 of the Act, the discretion to determine the composition of the selection boards is not sole and exclusive and is subject to negotiation.

"Finally, consideration of the management rights section of the Act does not change this conclusion. The Agency had argued before the Panel that negotiation over the composition of the boards in question would interfere with its rights to assign individuals in the Service, to assign work, and to determine the numbers, types, and classes of employees assigned to a work project, in a manner inconsistent with section 1005(a)(2), (3), and (b)(1) of the Act (footnote omitted) . . . (id., at p. 6).

. . .

"With respect to employee participation on certain boards or committees, under the C. S. Statute, the FLRA has distinguished between a proposal which merely defined the perimeters of employee participation (e.g., that the union shall be represented on a wage survey committee), which was held to be within the duty to bargain, and a proposal which permitted the union to actually select members of a committee, which was held to be inconsistent with the right to assign work (citations omitted).

"Consequently, it is clear that the question of whether negotiations with respect to the composition of selection boards would be inconsistent with section 1005 of the Act cannot be answered in the abstract, but only in the context of a specific proposal. In this regard, the Board is informed from the record before the Panel that the Union seeks to negotiate a proposal which generally would require that at least 50 percent of the members of the selection boards consist of career Foreign Service employees (footnote omitted). Under that type of proposal, the Agency would be able to assign any particular Foreign Service employee to a given board. Thus, with respect to the specific proposal in the record before the Panel, it is concluded that such proposal would not interfere with management's right under section 1005(a)(2) to assign individuals in the Service (citation omitted)

> . . . or its right under section 1005(a)(3) to assign work (citation omitted) . . . Further, the proposal does not specify which numbers, types, or classes of Foreign Service employees should be assigned to a selection board. Accordingly, it also must be concluded that negotiations on such a proposal would not be limited to being held only at the election of the Agency under section 1005(b)(1) of the Act" (id., at pp. 7-8).

9. With respect to Issue 2, the Board stated,

> ". . . it is conlcuded that section 405 of the Act does not vest in the head of the Agency the sole right to determine the apportionment of performance pay among classes of the Senior Foreign Service or to set the timing of that determination." (Case No. FS-PS-1 at p. 8; Jt. Exh. 11, Attachment).

In stating its reasons therefor, the Board, in part, noted:

> "Only subsection (c) of section 405 concerns the determination of the amount of performance pay available for distribution. On its face, section 405(c) merely states that the Secretary shall determine the total amount of performance pay available for distribution among the members of the Senior Foreign Service (SFS). Hence, contrary to the Agency's argument, the Act does not on its face specifically either permit or prohibit the apportionment of such distribution among SFS classes or speak to the timing of such a determination. The only express limitations placed upon the distribution of performance pay are those set forth in section 405(b), concerning the maximum amount and number of SFS members to whom performance pay can be distributed. Thus, within those limitations, under section 405 the determination of the apportionment of available performance pay and the timing of such determination is within the Secretary's discretion. Since the Act is silent with respect to these matters, it does not commit decisions concerning them to the sole and exclusive discretion of the Secretary. Thus, as set forth in regard to Issue 1, supra, such matters would be subject to the bargaining obligation, to the extent otherwise consistent with applicable law and regulations.
>
> "This conclusion is consistent with the legislative history of section 405(c), which indicates that

'the determination of the total amount which shall be made available in any one year is a budgetary determination left with the individual heads of the agencies. . . .' H. R. Rep. No. 96-992, Part 1 at 40, H. R. Rep. No. 96-992, Part 2 at 60; Sen. Rep. No. 96-913, 96th Cong., 2d Sess. 40 (1980). Thus, while the legislative history expressly supports a finding that the total amount to be made available is committed to the sole and exclusive discretion of the agency head, it provides no basis for finding, further, that any apportionment of the total amount could not be subject to negotiations.

"In this regard, the Agency claimed before the Panel that the determinations which are the subject of the Union's proposals are matters specifically provided for by statute, arguing generally that section 405 'contemplates' Service-wide, rather than class-wide competition. Noting that section 405 speaks in terms of 'members of the Foreign Service,' the Agency further contended that a selection board for each class could not take cognizance of and implement the Service-wide limitations set forth in section 405(b).

"The Agency's argument that the Act 'contemplates' Service-wide competition is not persuasive. The language of section 405, which states that 'members of the . . . Service . . . shall be eligible to compete for performance pay . . .,' simply does not address the groupings within which the members shall compete. Rather, the fact that, under section 602, separate selection boards evaluate and 'rank the members of a salary class on the basis of relative performance and may make recommendations for . . . awards of performance pay under section 405(c)' reasonably can be taken to indicate that Congress, to the contrary, contemplated class-wide competition. In any event, neither the language of the Act nor its legislative history provides dispositive support for the Agency's contention that Congress intended to provide only for Service-wide competition for performance pay.

"The Agency further has not demonstrated that a negotiated apportionment necessarily would result in the distribution of performance pay in a manner inconsistent with law, i.e., the limitations of section 405(b), previously mentioned. Moreover, in this connection, the Agency has not adverted to any

language in the Act to support a claim that the apportionment of awards in a manner consistent with law is within the sole and exclusive discretion of management. Rather, the language, quoted from the Committee Reports, supra, suggests to the contrary.

"Finally, the 'timing' of a determination as to the amount available for distribution is not shown to be other than a procedural matter; it appears to be a safeguard designed to protect the integrity of the performance pay system by preventing the Agency's determination of the total amount of performance pay available from being influenced by the recommendations of the selection boards. See H. R. Rep. No. 96-992, Part 2 at 16, 18. Even assuming that the total amount available for distribution is a matter reserved by the Act to the sole and exclusive discretion of the agency head, the timing of such a decision is not integral to and determinative of such amount. As a consequence, timing properly may be negotiated to the extent it would otherwise be consistent with applicable law and regulations. . . . (citations omitted).

"Finally, the Board is informed by the record before the Panel that the Union seeks to negotiate a proposal that, before any of the selection boards meet, the Director will determine the total amount of performance pay to be awarded for each class of officers and that those amounts will be stated and placed in sealed envelopes to be opened after the selection boards have made their recommendations (footnote omitted). Based upon the foregoing interpretation of the relevant statutory provisions, section 405 of the Act would not prohibit negotiations over such a proposal" (id. at pp. 8-10).

10. With respect to Issue 3, the Board stated:

". . . it is conlcuded that section 405 of the Act permits the Agency head to be bound by the performance pay recommendations of the selection boards established under section 602 of the Act." (Case No. FS-PS-1 at p. 10; Jt. Exh. 11, Attachment).

In stating its reasons therefor, the Board, in part, noted:

"Section 405(c) provides that the Secretary 'shall distribute performance pay to particular individuals on the basis of recommendations by selection boards established under section 602.'

There is no indication either in the Act or the relevant legislative history that Congress intended that the discretion thus granted to the Secretary be sole and exclusive. Rather, the legislative history suggests, as the Union argued before the Panel, that selection board recommendation are binding on the agency head:

> 'The rankings of selection boards serve different purposes. For promotion and career extensions the rankings of a selection board are binding on the Secretary. . . . Names of individuals can only be removed for exceptional reasons.
>
> 'Awards of performance pay to members of the Senior Foreign Service are similarly based on the rankings of selection boards. . . .
>
> . . .
>
> H. R. Rep. No. 96-992, Part 2 at 28.'

To respond to the issue raised by the Panel it is not necessary to find a Congressional intent that the agency head would be bound by selection board recommendations, and the Board expressly does not so find; it is only necessary to find that the agency head's discretion to award performance pay to an individual was not intended to be sole and exclusive and, therefore, could be exercised through negotiations.

"In this connection, the Agency states that, in section 405(c), 'Congress intended to leave the Director free to exercise his discretion in apportioning performance pay among those recommended by selection awards, taking into account the criteria established by OPM. . . .' . . . The Agency does not, however, establish, nor does it otherwise appear, that the Director's discretion is sole and exclusive. Thus, as discussed in Issue 1, supra, to the extent otherwise consistent with applicable law and regulations, the Agency head could exercise his discretion, provided in section 405(c), through negotiations and agree to make awards in accordance with selection board recommendations.

> "The Board is informed by the record before the Panel that the Union seeks to negotiate a proposal which would establish that the recommendations for performance pay made by the selection boards would be binding upon the Director of the Agency (footnote omitted). Based upon the foregoing interpretation of the Act, section 405 of the Act permits negotiations over such a proposal (footnote omitted)." (id., at pp. 11-12).

11. By letter dated June 8, 1982, FSIP transmitted to the parties the Board's Interpretation and Guidance and directed that, ". . . during the 21 days following receipt of this letter the parties shall resume negotiations over all issues in dispute" and that "They shall notify the Panel, in writing, at the end of that time as to the status of the negotiations." FSIP further notified the parties that, "If complete agreement has not been reached, the Panel shall take whatever action it deems appropriate with respect to all remaining issues" (Jt. Exh. 11).

12. By letter, dated June 25, 1982, to AFGE, USIA stated, in part, as follows:

> "The Agency has decided to not comply with the provisions of the Panel's letter of June 8, 1982 (received June 10, 1982). . . ." (Jt. Exh. 13).

13. By letter, also dated June 25, 1982, USIA informed FSIP as follows:

> "This is in reply to your letter of June 8, 1982 concerning the above styled case. We have carefully reviewed the Interpretation and Guidance issued by the Foreign Service Labor Relations Board in Case No. FS-PS-1 on June 4, 1982 in which the Board found that AFGE's proposals concerning: (1) composition of performance pay selection boards for Senior Foreign Service, (2) timing and apportionment by classes of performance pay for members of the Senior Foreign Service, and (3) binding effect of rankings of members of the Senior Foreign Service by performance pay selection boards, were negotiable.
>
> "We disagree with the Board's opinion and remain convinced that these proposals are non-negotiable as a matter of law. For that reason we respectfully decline to resume negotiations on these issues, as directive in your letter. We of course are aware that AFGE Local 1812 may file an unfair labor practice charge against the Agency based on this refusal to negotiate. If they do and the Board sustains the

charge, that action would enable us to seek juducial resolution of these negotiability issues. . . ." (Jt. Exh. 14).

14. By letter, dated July 21, 1982, FSIP informed the parties that each had until August 4, 1982, to file any supplemental submission and that following receipt of any further submissions, FSIP would take whatever action it deemed appropriate to resolve the dispute (Jt. Exh. 17).

15. By letter, dated August 4, 1982, USIA urged that the FSIP adopt its, USIA's, final proposals [November 30, 1981] in resolving the impasse and reaffirmed its position that the Board's Interpretation and Guidance was incorrect (Jt. Exh. 18).

16. On August 18, 1982, FSIP issued its Decision and Order (Case No. 82-FSIDP-3) (Jt. Exh. 19, Attachment). In its decision, after setting forth the position of the parties, the issues at impasse, etc., FSIP concluded,

> "The Foreign Service Labor Relations Board found that procedures applicable to awards of performance pay are appropriate subjects of collective bargaining under the Act and further, that the Union's proposal is consistent with both the Act and its legislative history. In this regard, we do not agree that the collegiality of peer review is incompatible with the parties' labor-management relationship and note that the peer-review system has been used successfully for many years with respect to promotions.
>
> "After considering the evidence and arguments, we find that the Union's proposal is preferable to the Employer's as a basis for settlement of this dispute. In our view, the Union's proposal is not only reasonable but also consistent with (1) the parties' past practice with respect to promotions, and (2) the practice of other foreign affairs agencies with respect to performance pay of employees similarly situated.
>
> "For all of these reasons we conclude that the dispute concerning performance pay should be resolved on the basis of the Union's proposal. . . ." (Decision and Order, p. 10; Jt. Exh. 19, Attachment).

17. In addition, FSIP in its decision, further stated,

> ". . . Furthermore, inasmuch as the 1982-83 selection boards are to be convened in the near future and the

parties have agreed to forego renegotiation of the promotion precepts with respect to the new boards, the Union's proposal should be amended to apply to both the 1981-82 and the 1982-83 boards" (footnote omitted). (Decision and Order pp. 10-11; Jt. Exh. 19, Attachment).

18. The Order of FSIP was as follows:

> "Pursuant to the authority vested in it by section 1010 of the Foreign Service Act of 1980 and because of the failure of the parties to resolve their dispute during the course of proceedings instituted pursuant to section 1471.5(b) of the Panel's regulations, the Foreign Service Impasse Disputes Panel under section 1471.10(a) of its regulations hereby orders the following:
>
> "The parties shall (1) adopt the Union's proposal concerning performance pay as amended to provide that it shall apply to both the 1981-82 and 1982-83 boards, and (2) implement it no later than September 1, 1982." (Decision and Order, p. 11; Jt. Exh. 19, Attachment).

19. By letter, dated August 30, 1982, to FSIP, USIA, after re-asserting that, "we disagree with the Interpretation and Guidance issued by the Foreign Service Labor Relations Board", stated,

> "For that reason we respectfully decline to implement the Decision and Order as directed by the Panel" (Jt. Exh. 22).

20. USIA thereafter refused to convene selection boards for performance pay, as directed by FSIP, and USIA's Senior Foreign Service employees received no performance pay awards.

21. Mr. James T. Hackett, Associate Director for Management, USIA, in Case No. 3-CA-20356(F) testified, which testimony was by stipulation included by reference in this case (Tr. 30-32), in part, as follows:

> "Well, at the time I was not aware of it, but I understand that approximately $230,000 had been included in the fiscal year 1982 budget for executive bonuses for the senior foreign service" (Tr. Case No. 3-CA-20356(F), p. 194).

and that,

> "No funds were either obligated or spent for bonuses in fiscal year 1982 and in fact the payroll

portion of the budget was inadequate to the (sic) meet the payroll needs of the agency in fiscal year 1982 so to avoid a deficiency, we reallocated all payroll funds including the $230,000 to meet payroll needs. That is all funds in the payroll portion of the budget were reallocated to meet payroll and we ended up with the payroll account as I understand some $1,000 or $1,300 in the black, so that we avoided a deficit in that account." (Tr. Case No. 3-CA-20356(F), p. 195; see, also, transcript in this case at pp. 64-67.).

22. Mr. George Nesterczuk, Associate Director for Administration, Office of Personnel Management, testified, in part, as to the Senior Executive Service under the Civil Service Reform Act, as follows:

"Q. Do you know of any instance in a particular branch in which the assignment of personnel to serve on a review board has been negotiated between the agency and the union?

"A. No.

"Q. Is there any provision dealing with whether or not recommendations or writings (sic) by the performance review board are binding on the agencies involved?

"A. I'm not sure that I fully understood the question, and I'm not sure I fully understand the answer.

"Q. There's nothing in the law that regulates that?

"A. In terms of binding conclusions on the part of the FSLRB?

"Q. Yes.

"A. No.

"Q. Do you know of any agencies in which the recommendations of the FSLRB are in fact treated as binding?

"A. No agencies" (Tr. 50).

On cross-examination, Mr. Nesterczuk further testified,

"Q. Isn't it true that there are no recognized labor organizations for senior executives throughout the entire government?

"A. That is correct" (Tr. 51).

CONCLUSIONS

The sole issue presented herein is whether, as alleged in paragraphs 6-10 of the Complaint, Respondent's admitted refusal to implement FSIP's Decision and Order of August 18, 1982 (Jt. Exh. 19), as Respondent stated in its letter of August 30, 1982 (Jt. Exh. 22), violated §§ 1015(a)(1), (5), and (6) of the Act. The Foreign Service Impasse Disputes Panel was established under § 1010 of the Act for the purpose of resolving negotiating impasses arising in the course of collective bargaining under the Act. Pursuant to § 1010(c)(3), ". . . final action of the Panel under this section . . . shall be binding on such parties during the term of the collective bargaining agreement unless the parties agree otherwise." Section 1015(a)(6) of the Act provides that it is an unfair labor practice,

> "(6) to fail or refuse to cooperate in impasse procedures and impasse decisions, as required under this chapter" (§ 1015(a)(6)).

In this case, AFGE invoked the services of FSIP on October 26, 1981, and, through mediation by FSIP, the parties were able to resolve their differences over the promotion issue, as to which they had been at impasse, but were unable to resolve the performance pay issue, as to which they also were at impasse and, during written submissions to FSIP, USIA declared certain portions of AFGE's proposals to be non-negotiable. FSIP made no negotiability determination; but, rather, pursuant to § 1429.4[5/] of the Regulations, requested the Board to issue a ruling with respect to major policy issues which had arisen in this case as the result of USIA declaring certain proposals of AFGE non-negotiable. Clearly, the Act, § 1007(a)(3), specifically grants the Board authority, inter alia, to "resolve issues relating to the obligation to bargain in good faith"[6/] and the Board in its Interpretation and Guidance, supra,

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5/ "Notwithstanding the procedures set forth in this subchapter, the General Counsel, the Assistant Secretary, or the Panel may refer for review and decision or general ruling by the Board any case involving a major policy issue that arises in a proceeding before any of them. . . ." (22 C.F.R. § 1429.4).

6/ Under the circumstances, since the Board, and not FSIP, determined that AFGE's proposals were negotiable in its Interpretation

(continued)

did decide the negotiability of AFGE's proposals in question. The decision of the Board was not an appeal of a negotiability issue under Part 1424 of the Regulations, which, pursuant to §§ 1424.1 and 1424.2 of the Regulations, may be sought only by the exclusive representative; but, rather, was a decision by the Board, pursuant to § 1429.4 of the Regulations, directed to FSIP of the Board's interpretation of the Act in the context of the bargaining proposals at impasse.

The Regulations provide for two quite separate and distinct paths for determination of negotiability issues. One is by petition by the exclusive bargaining representative to the Board, pursuant to § 1424.2 of the Regulations; the other is referral by the FSIP, pursuant to § 1429.4 of the Regulations, to the Board, ". . . for review and decision . . . by the Board any case involving a major policy issue that arises in a proceeding . . ." before it. The effect of the decision, whether pursuant to Part 1424 of the Regulations or whether pursuant to § 1429.4 of the Regulations, is different, for example, pursuant to § 1424.10(c) an order of the Board is subject to judicial enforcement, while a decision pursuant to § 1429.4 is not, but is for the guidance of the FSIP, i.e., consistent with the assumption that only the Board may make negotiability determinations, that is, "resolve issues relating to the obligation to bargain in good faith" (§ 1007(a)(3)), the Board decided the negotiability of the issues remaining at impasse before the FSIP, as fully set forth in its Interpretation and Guidance to FSIP, and, the negotiability issues having been resolved by the Board, FSIP could then, pursuant to § 1010 of the Act, resolve the impasse. The decision of the Board in Case No. FS-PS-1, as to the negotiability of the issues referred by FSIP to the Board, is binding on me, fully to the extent that a decision pursuant to Part 1424 would be binding on me, cf. Department of

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(continued)

and Guidance, Case No. FS-PS-1 (Jt. Exh. 11, Attachment), it is unnecessary to reach or to decide the authority of FSIP, if any, pursuant to § 1010(c)(2)(C) "to take whatever action is necessary and not inconsistent with this chapter to resolve the impasse," to resolve negotiability disputes beyond referral to the Board as specifically provided by § 1429.4 of the Regulations. Certainly the Act, as noted above, specifically provides that the Board shall "resolve issues relating to the obligation to bargain in good faith" and there is no corresponding grant of authority in the Act to the FSIP. The Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, which, pursuant to § 1007(c)(2)(F) of the Act, the Board exercises "consistent with the provisions" of the Act, make it clear that the Authority, and not the Federal Service Impasses Panel, shall "resolve issues relating to the duty to bargain in good faith under section 7117(c) of this title" (5 U.S.C. § 7105(a)(2)(E); See, also, §§ 7117(b)(3) and (c)).

the Air Force, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 10 FLRA No. 53 (1982), and Respondent's and Intervenor's assertions to the contrary (Respondent - Intervenor Brief, pp. 10-11) are rejected. Respondent - Intervenor are correct, certainly, ". . . that the Board itself will be at liberty . . . to reconsider any or all of the opinions it expressed . . . in No. FS-PS-1" (Respondent - Intervenor Brief, p. 11) and, in order that the record be complete, I allowed, over objection (Tr. 45-47), the testimony of Mr. Nesterczuk (Tr. 49-52). Nothing in Mr. Nesterczuk's testimony, to the effect that assignment of personnel to performance review boards under the Senior Executive Service is not negotiated[7/] and that he knew of no agency where recommendations of performance review boards are treated as binding, nor in Mr. Hackett's testimony that the money originally included in USIA's FY 82 budget for performance pay had been reallocated and expended for other pay purposes, persuades me in the slightest that the Board's Interpretation and Guidance should not be followed. Otherwise, as Respondent - Intervenor concede, "The only pertinent facts shown by the record other than those disclosed in the foregoing review of prior proceedings are those revealed in the testimony of respondent's witnesses Nesterczuk and Hackett" (Respondent - Intervenor Brief, p. 9), the contentions of Respondent - Intervenor are the same contentions considered and decided by the Board in its Interpretation and Guidance. Most assuredly, this is not a situation where, even arguably, it may be asserted that negotiability has not been decided squarely by the Board, cf. State of New York, Division of Military and Naval Affairs (Albany, New York), and The Department of Defense, Petitioners - Cross Respondents v. Federal Labor Relations Authority (Boston, Massachusetts), Respondent - Cross Petitioner, Docket Nos. 82-4072, 82-490, United States Court of Appeals for the Second Circuit Nos. 138, 139 (December 10, 1982); Florida National Guard, 9 FLRA No. 41, 9 FLRA 347, 357 (1982). To the contrary, as noted above, FSIP, pursuant to § 1429.4 of the Regulations, referred to the Board the issue which had arisen before the FSIP, as the result of USIA declaring certain proposals of AFGE non-negotiable, and the Board decided the negotiability of AFGE's proposals. FSIP directed the parties to negotiate in light of the Board's Interpretation and Guidance. USIA refused to resume negotiations.[8/] Thereafter, on August 18, 1982, FSIP issued its Decision

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7/ While true, such assertion is a non sequitur inasmuch as Mr. Nesterczuk conceded that there are no recognized labor organizations for senior executives (Tr. 51).

8/ The Complaint does not allege that Respondent's refusal to cooperate in impasse procedures, i.e., USIA's refusal to negotiate on and after June 25, 1982, as an independent unfair labor practice. Had it been alleged, I would have no reservation that such conduct constituted independent violations of §§ 1015(a)(6), (5) and (1) of the Act.

and Order[9/] and on August 30, 1982, USIA refused to implement the Decision and Order of FSIP, and thereafter USIA refused to convene selection boards for performance pay as directed by FSIP. By its refusal to implement the final action of FSIP, USIA, in violation of the express provisions of § 1010(c)(3) of the Act, thereby violated § 1015(a)(6) of the Act and, because such conduct necessarily interfered with, restrained, and coerced employees in the exercise of their rights under the Act by denying them the fruits of collective bargaining, also violated § 1015(a)(1) of the Act. See, Bureau of Alcohol, Tobacco and Firearms, Western Region, Department of the Treasury, San Francisco, California, 4 FLRA No. 40 (1980), enf'd sub-nom., 672 F.2d 732 (9th Cir. 1982); State of Nevada National Guard, 7 FLRA No. 37 (1981), appeal docketed, No. 82-7034 (9th Cir., January 18, 1982); Florida National Guard, 9 FLRA No. 41 (1982); National Guard Bureau, Maine Air National Guard (Augusta, Maine), 10 FLRA No. 101 (1982); Michigan Army National Guard, Lansing, Michigan, 11 FLRA No. 74 (1983). In addition, cooperation with an FSIP order resolving a negotiation impasse is part and parcel of the duty to negotiate in good faith and USIA's refusal to comply with the order of FSIP also violated § 1015(a)(5) of the Act.[10/]

9/ As noted above, FSIP did not decide the negotiability of AFGE's proposals. To the contrary, the Board, upon referral by FSIP, determined the negotiability of AFGE's proposals. FSIP directed the parties to negotiate in light of the Board's Interpretation and Guidance; USIA refused. Thereafter, FSIP afforded the parties the opportunity to make supplemental submissions and in its Decision and Order FSIP, noting that the Board had found that procedures applicable to awards of performance pay are appropriate subjects of collective bargaining, after considering the evidence and arguments before it, found that the Union's (AFGE's) proposal was preferable and ordered that the dispute be resolved on the basis of the Union's (AFGE's) proposal, which action § 1010(c) of the Act expressly authorizes. FSIP, on its own motion, did, because "the 1982-83 selection boards are to be convened in the near future and the parties have agreed to forego reneogitation of the promotion precepts with respect to the new boards," amend the Union's (AFGE's) proposal to apply to both the 1981-82 and the 1982-83 boards. Respondent has not challenged FSIP's authority to amend AFGE's proposal so as to apply to the 1982-83 boards as well as to the 1981-82 boards.

10/ I am aware, as General Counsel noted in his Brief (G.C. Brief, p. 6 n. 5), that the Authority, in like cases arising under the Statute, has found it unnecessary to pass on the (a)(5) issue, for the reason, as stated by Judge Chaitovitz, in National Guard Bureau, supra, 10 FLRA at 595 n. 7, that "such a finding would provide no additional remedy." Nevertheless, I have found a violation of § 1015(a)(5) of the Act, not merely because this is a matter of first impression for the Board (G.C. Brief, supra) but, rather, because the record shows not only a refusal to

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The assertion by counsel for the Department of State at the hearing that certain matters were permissible subjects of bargaining but not mandatory subjects of bargaining (Tr. 82-83), i.e., were negotiable only "at the election of the Department," pursuant to § 1005(b)(1) of the Act, was considered and rejected by the Board in its Interpretation and Guidance with regard to the issues here involved. (See, Jt. Exh. 11, Attachment, pp. 8, 12 and 12n.12). Were it otherwise, that is, if the issues as to which USIA refused to negotiate were negotiable only at the election of USIA, pursuant to § 1005(b)(1) of the Act, there could be no bargaining impasse as to such decision and, of course, the refusal to negotiate would not contravene § 1015(a)(1), (5), or (6) of the Act.11/

REMEDY

Respondent obviously relies in some manner on the testimony of Mr. Hackett, ". . . that the sum of $230,000 for performance pay originally included by USIA in its financial plan for fiscal year 1982 was reallocated and expended for other Foreign Service pay purposes, except for some $1,300" (Respondent -Intervenor Brief, p. 10), but does not further articulate its position, other than as Mr. Hackett's testimony and Mr. Nesterczuk's testimony, as the "only pertinent facts shown by the record other than those disclosed in . . . prior proceedings" (Respondent - Intervenor Brief, p. 9) relate to negotiability. However, the inference of Respondent's assertions is, as stated by AFGE, that, "The Agency seeks to avoid paying performance pay for the 1981 performance cycle . . . by claiming that the funds authorized and appropriated for that purpose are not (sic) longer available" (AFGE Brief, p. 4).

General Counsel, AFGE, and amicus curiae (AFSA) are in agreement that as to FY 82 Respondent should be ordered to comply with the Decision and

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(continued)

cooperate with an impasse decision but also a refusal to cooperate in impasse procedures, i.e. to negotiate as directed by FSIP, and enforcement of the obligation to bargain inherent in cooperation with an FSIP order resolving a negotiating impasse may be significant with regard to compliance with the order of the FSIP.

11/ See, legislative history of the identical provision of § 7106(b)(1) of the Statute, Legislative History of the Federal Service Labor-Management Relations Statute, Title VII of the Civil Service Reform Act of 1978, Subcommittee on Postal Personnel and Modernization of the Committee on Post Office and Civil Service, House of Representatives, 96th Cong., 1st Sess., Committee Print No. 96-7, at page 949.

Order of FSIP;12/ however, as to FY 83, AFGE prays that, ". . . the Board should order the amount of $230,000, authorized and appropriated in the FY 83 budget for performance pay for the 1982 performance cycle and to be distributed in FY 83, (sic) placed in escrow pending appeal" (AFGE Brief, p. 7). Appealing as AFGE's prayer is, I find no authority under Section 1016(g) of the Act to order that money be placed in escrow. To the contrary, while § 1016(g)(2) specifically provides that an agreement in accordance with the order of the Board may be given retroactive affect, § 1009(d) of the Act authorizes only the United States District Court for the District of Columbia, upon petition of the Board, for "appropriate temporary relief (including a restraining order)" to grant such interim relief. Accordingly, the request of AFGE that USIA be ordered to place the amount of $230,000, included in its FY 83 budget for performance pay, in escrow is denied.

I shall recommend that USIA forthwith comply with the Decision and Order of the FSIP (Foreign Service Impassee Disputes Panel) of August 18, 1982, which will mean, as the Order of FSIP provided: (a) that the parties adopt AFGE's proposal concerning performance pay as amended to provide that it shall apply to both the 1981-82 and 1982-83 boards; and (b) that USIA shall now implement the Decision and Order of FSIP and comply fully therewith as if it had done so no later than September 1, 1982, as FSIP had ordered. To the extent that the FSIP Decision and Order related to procedures for making Presidential Award nominations to the Interagency Selection Board, Respondent will, of course, be ordered to comply therewith.

I am aware that Section 405(c) of the Act specifically provides that the head of the agency, ". . . shall determine the amount of performance pay available . . . each year . . ." which is fully reflected in AFGE's proposal which the FSIP ordered be adopted, see for example, "The total amount of agency performance pay . . . shall be determined by the Director. . . . (Jt. Exh. 19, Attachment, Par. 6, p. 6). The record shows, and I find, that but for Respondent's refusal to comply with the Decision and Order of FSIP (Jt. Exh. 22), Respondent would have granted performance pay for FY 82 (Jt. Exh. 21), presumptively not less than the total amount, $230,000, originally allocated in its FY 82 budget for performance awards. Respondent may not avoid compliance with the Order herein by now determining that no money is available for performance pay

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12/ AFGE: "The Board has the authority to order that the Panel order be implemented without determining explicitly from which fiscal year the agency should be required to pay the amounts of money authorized and appropriated for performance pay" (AFGE Brief, p. 4).

AFSA: ". . . the Board order USIA to immediately implement the (continued)

for FY 82.13/ To the contrary, Respondent must now determine as the total amount of agency performance pay available for FY 82 the full amount that was available as of August 30, 1982, which, presumptively was not less than the amount originally allocated in its FY 82 budget for performance awards. That is, Respondent must treat such amount as available for the payment of performance awards without regard to whether such funds are now included in current appropriations. Any present or future determination by Respondent of any lesser amount than $230,000 for FY 82 shall be prima facie evidence of Respondent's failure and refusal to comply with the Order herein and Respondent shall have the full burden of proof to show by a clear and convincing preponderance of the evidence that, prior to its refusal to implement the Order and Decision of the FSIP, on, or before August 30, 1982, a lesser amount had been determined by the Director to be available for performance pay. In the same manner, presumptively not less than $230,000, the amount allocated in Respondent's FY 83 budget for performance awards, is available for performance awards in FY 83. Respondent must now determine, as the total amount of agency performance pay available for FY 83, the full amount that would have been available in FY 83 for performance awards had it complied with the Decision and Order of the FSIP not later than September 1, 1982. Any present or future determination by Respondent of any lesser amount than $230,000 for performance awards for FY 83 shall also be prima facie evidence of Respondent's failure and refusal to comply with the Order herein and Respondent shall have the full burden of proof to show by a clear and convincing preponderance of the evidence that, wholly apart from its refusal to comply with the Decision and Order of the FSIP, the Director would have determined a lesser amount to be available for performance pay for FY 83.

Having found that Respondent violated §§ 1015(a)(1), (5), and (6) of the Act, I recommend that the Board adopt the following:

(continued)

Panel's Decision, including the procedures for making Presidential Award nominations to the Interagency Selection Board" (AFSA Brief, p. 4).

G.C.: "Comply and cooperate forthwith with the Decision and Order of the Foreign Service Impasse Disputes Panel issued in Case No. 82 FSIDP 3 on August 20, 1982" (G.C. Brief, Proposed Order, Par. 2(a), p. 7).

13/ I am aware that FY 82 has ended and no opinion is expressed as to how, or from what source, performance awards can, or should, be paid. I am aware of the provisions of § 1016(g)(2); but, in the final analysis, this determination must be made by other authorities. In order to remedy

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ORDER

Pursuant to § 1423.29 of the Regulations, 22 C.F.R. § 1423.29, and § 1016 of the Act, 22 U.S.C. § 4116, the Board hereby orders that the United States Information Agency shall:

1. Cease and desist from:

(a) Failing and refusing to comply and cooperate with the Decision and Order of the Foreign Service Impasse Disputes Panel issued in Case No. 82 FSIDP 3 on August 18, 1982.

(b) In any like or related manner interfering with, restraining, or coercing any employee in the exercise by the employee of any right under Chapter 10 - Labor-Management Relations - of the Foreign Service Act of 1980.

2. Take the following affirmative action in order to effectuate the purpose and policies of the Act:

(a) Forthwith adopt AFGE's proposal concerning performance pay, as amended by the Order of the FSIDP, to provide that it shall apply to both the 1981-82 and 1982-83 boards, as required by the Order of the Foreign Service Impasse Dispute Panel of August 18, 1982.

(b) Comply and cooperate forthwith with the Decision and Order of the Foreign Service Impasse Disputes Panel issued in Case No. 82 FSIDP 3 on August 18, 1982.

(continued)

its unfair labor practice, Respondent is required to comply with the Decision and Order of FSIP retroactive to the date FSIP ordered that it be implemented, September 1, 1982, and, to this end, Respondent must now take all action that it could have taken had it then complied with the Decision and Order of FSIP. If Respondent can pay FY 82 performance awards from appropriations for later fiscal years, it must do so; if Respondent must seek supplemental appropriations, it must do so. In short, Respondent must now take all action it could have taken as of September 1, 1982, but for its refusal to comply with the Decision and Order of FSIP.

(c) Forthwith take all actions consonant with law to implement said Decision and Order that it could have taken to implement said Decision and Order no later than September 1, 1982, the date of implementation ordered by the Panel, but for its unlawful refusal to comply with the Decision and Order of the Foreign Service Impasse Disputes Panel.

(d) Post at all locations, both in the United States and abroad, where notices to members of the Senior Foreign Services are customarily posted, copies of the attached notice on forms to be furnished by the Board. Upon receipt of such forms they shall be signed by the Director, United States Information Agency, and they shall be posted and maintained for 60 consecutive days thereafter in conspicuous places, including all bulletin boards and other places where notices to the Senior Foreign Service are customarily posted. The Director shall take reasonable steps to insure that said notices are not altered, defaced, or covered by any other material.

(e) Pursuant to § 1423.30 of the Regulations, 22 C.F.R. § 1423.30, notify the Regional Director of the Federal Labor Relations Authority, Region 3, whose address is: Suite 700, 1111 18th Street, NW., P. O. Box 33758, Washington, DC 20033-0758, in writing within 30 days from the date of this Order as to what steps have been taken to comply therewith.

William B. Devaney

WILLIAM B. DEVANEY
Administrative Law Judge

Dated: March 25, 1983
Washington, DC

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER OF THE

FOREIGN SERVICE LABOR RELATIONS BOARD

AND IN ORDER TO EFFECTUATE THE POLICIES OF

CHAPTER 10 OF

THE FOREIGN SERVICE ACT OF 1980

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to comply and cooperate with the Decision and Order of the Foreign Service Impasse Disputes Panel issued in Case No. 82 FSIDP 3 on August 3, 1982.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce any employee in the exercise of any right under Chapter 10 of the Foreign Service Act of 1980.

WE WILL forthwith adopt the proposal of the American Federation of Government Employees, Local 1812 (AFL-CIO), concerning performance pay, as amended by the Order of the FSIDP, to provide that it shall apply to both the 1981-82 and 1982-83 boards, as required by the Order of the Foreign Service Impasse Disputes Panel of August 18, 1982.

WE WILL comply and cooperate forthwith with the Decision and Order of the Foreign Service Impasse Disputes Panel issued in Case No. 82 FSIDP 3 on August 18, 1982.

WE WILL forthwith take all actions, consonant with law, to implement said Decision and Order that we could have taken to implement said Decision and Order no later than September 1, 1982, the date of implementation ordered by the Panel, but for our unlawful refusal to comply with the Decision and Order of the Foreign Service Impasse Disputes Panel.

UNITED STATES INFORMATION AGENCY

Dated: _____ By: _____
(Signature)

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Region 3, whose address is Suite 700, 1111 18th Street, NW., P. O. Box 33758, Washington, D.C. 20033-0758, and whose telephone number is (202) 653-8507.

CERTIFICATE OF SERVICE

I hereby certify that copies of this DECISION issued by WILLIAM B. DEVANEY, Administrative Law Judge, in Case No. 3-CA-20766(F) were sent to the following parties in the manner indicated:

Freda D. Green

CERTIFIED MAIL:

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(Formerly United States International
Communication Agency)
1776 Pennsylvania Avenue, NW.
Washington, DC 20547

Dated: March 25, 1983
Washington, DC

UNITED STATES OF AMERICA
BEFORE THE
FOREIGN SERVICE LABOR RELATIONS BOARD
WASHINGTON, D.C.

UNITED STATES INFORMATION AGENCY

(Respondent)

and

Case Nos. 3-CA-20356(F)
and
3-CA-20766(F)

AMERICAN FEDERATION OF GOVERNMENT
EMPLOYEES, LOCAL 1812, AFL-CIO

(Charging Party/Union)

ORDER

By Joint Motion the United States Information Agency (Respondent) and American Federation of Government Employees, Local 1812, AFL-CIO (Charging Party/Union) moved the Foreign Service Labor Relations Board that the above-entitled cases be deemed settled with prejudice and that they be dismissed as fully compromised and settled, the terms of such being set forth in the Joint Motion. On the basis of such motion and the settlement of the cases, the General Counsel has moved that they be remanded to the Regional Director for appropriate disposition. On the basis of the above, the cases are hereby remanded.

For the Foreign Service Labor Relations Board.

Issued, Washington, D.C., October 14, 1983

by Harold D. Kessler
James J. Shepard, Executive Director