

not later than two years after the occurrence giving rise to the grievance or, in the case of a grievance with respect to the grievant's rater or reviewer, one year after the date on which the grievant ceased to be subject to rating or review by that person, but in no case more than three years after the occurrence giving rise to the grievance. There shall be excluded from the computation of any such period any time during which, as determined by the Foreign Service Grievance Board, the grievant was unaware of the grounds for the grievance and could not have discovered such grounds through reasonable diligence.

(b) Failure of Department to resolve grievance; grievance filed with Foreign Service Grievance Board

If a grievance is not resolved under Department procedures (which have been negotiated with the exclusive representative, if any) within ninety days after it is filed with the Department, the grievant or the exclusive representative (on behalf of a grievant who is a member of the bargaining unit) shall be entitled to file a grievance with the Foreign Service Grievance Board for its consideration and resolution.

(c) Grievances based on alleged discrimination

(1) In applying subsection (a) with respect to an alleged violation of a law, rule, regulation, or policy directive referred to in section 4131(a)(1)(H) of this title, the reference to "2 years" shall be deemed to read "180 days", subject to paragraph (2).

(2) If the occurrence or occurrences giving rise to the grievance are alleged to have occurred while the grievant was assigned to a post abroad, the 180-day period provided for under paragraph (1) shall not commence until the earlier of—

(A) the date as of which the grievant is no longer assigned to such post; or

(B) the expiration of the 18-month period beginning on the date of the occurrence giving rise to the grievance or the last such occurrence, as the case may be.

(Pub. L. 96-465, title I, §1104, Oct. 17, 1980, 94 Stat. 2144; Pub. L. 102-138, title I, §153(b), Oct. 28, 1991, 105 Stat. 673; Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title III, §330(a), (b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-438; Pub. L. 107-228, div. A, title III, §317, Sept. 30, 2002, 116 Stat. 1379.)

Editorial Notes

AMENDMENTS

2002—Subsec. (a). Pub. L. 107-228 substituted "but in no case more than three years" for "but in no case less than two years".

1999—Subsec. (a). Pub. L. 106-113, §1000(a)(7) [div. A, title III, §330(a)], in first sentence, substituted "not later than two years after the occurrence giving rise to the grievance or, in the case of a grievance with respect to the grievant's rater or reviewer, one year after the date on which the grievant ceased to be subject to rating or review by that person, but in no case less than two years after the occurrence giving rise to the grievance." for "within a period of 3 years after the occurrence or occurrences giving rise to the grievance or such shorter period as may be agreed to by the Department and the exclusive representative."

Subsec. (c)(1). Pub. L. 106-113, §1000(a)(7) [div. A, title III, §330(b)], substituted "'2 years'" for "'3 years'".

1991—Subsec. (a). Pub. L. 102-138, §153(b)(1), inserted "under this subchapter" before "unless".

Subsec. (c). Pub. L. 102-138, §153(b)(2), added subsec. (c).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title III, §330(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A-438, provided that: "The amendments made by this section [amending this section] shall take effect 180 days after the date of enactment of this Act [Nov. 29, 1999] and shall apply to grievances which arise on or after such effective date."

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-138 not applicable with respect to any grievance, within the meaning of section 4131 of this title, arising before Oct. 28, 1991, see section 153(f) of Pub. L. 102-138, set out as a note under section 4115 of this title.

§ 4135. Foreign Service Grievance Board

(a) Establishment; composition

There is established the Foreign Service Grievance Board (hereinafter in this subchapter referred to as the "Board"). The Board shall consist of no fewer than 5 members who shall be independent, distinguished citizens of the United States, well known for their integrity, who are not employees of the Department or members of the Service.

(b) Appointment and selection of nominees; length of terms; vacancies

The Chairperson and other members of the Board shall be appointed by the Secretary of State, from nominees approved in writing by the agencies to which this subchapter applies and the exclusive representative (if any) for each such agency. Each member of the Board shall be appointed for a term of 2 years, subject to renewal with the same written approvals required for initial appointment. In the event of a vacancy on the Board, an appointment for the unexpired term may be made by the Secretary of State in accordance with the procedures specified in this section. In the event of inability to obtain agreement on a nominee, each such agency and exclusive representative shall select 2 nominees and shall, in an order determined by lot, in turn strike a name from a list of such nominees until only one name remains. For purposes of this section, the nominee whose name remains shall be deemed to be approved in writing by each such agency head and exclusive representative.

(c) Compensation

Members of the Board who are not employees of the Government shall be paid for each day they are performing their duties (including traveltime) at the daily equivalent of the maximum rate payable for grade GS-18 of the General Schedule under section 5332 of title 5.

(d) Removal

The Secretary of State may, upon written notice, remove a Board member for corruption, neglect of duty, malfeasance, or demonstrated in-

capacity to perform his or her functions, established at a hearing (unless the right to a hearing is waived in writing by the Board member).

(e) Administrative services; payment of expenses; assignment as staff employees of Board; performance evaluation reports; records

The Board may obtain facilities, services, and supplies through the general administrative services of the Department of State. All expenses of the Board, including necessary costs of the travel and travel-related expenses of a grievant, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, employees of the Department and members of the Service may be assigned as staff employees for the Board. Within the limits of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The individuals so appointed or assigned shall be responsible solely to the Board, and the Board shall prepare the performance evaluation reports for such individuals. The records of the Board shall be maintained by the Board and shall be separate from all other records of the Department of State under appropriate safeguards to preserve confidentiality.

(f) Report

(1) Not later than March 1 of each year, the Chairman of the Foreign Service Grievance Board shall prepare a report summarizing the activities of the Board during the previous calendar year. The report shall include—

(A) the number of cases filed;

(B) the types of cases filed;

(C) the number of cases on which a final decision was reached, as well as data on the outcome of cases, whether affirmed, reversed, settled, withdrawn, or dismissed;

(D) the number of oral hearings conducted and the length of each such hearing;

(E) the number of instances in which interim relief was granted by the Board; and

(F) data on the average time for consideration of a grievance, from the time of filing to a decision of the Board.

(2) The report required under paragraph (1) shall be submitted to the Director General of the Foreign Service and the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(Pub. L. 96-465, title I, §1105, Oct. 17, 1980, 94 Stat. 2144; Pub. L. 106-113, div. B, §1000(a)(7) [div. A, title III, §331], Nov. 29, 1999, 113 Stat. 1536, 1501A-439.)

Editorial Notes

AMENDMENTS

1999—Subsec. (f). Pub. L. 106-113 added subsec. (f).

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 4136. Foreign Service Grievance Board procedures

The Board may adopt regulations concerning its organization and procedures. Such regulations shall include provision for the following:

(1) The Board shall conduct a hearing at the request of a grievant in any case which involves—

(A) disciplinary action or the retirement of a grievant from the Service under section 4007 or 4008 of this title, or

(B) issues which, in the judgment of the Board, can best be resolved by a hearing or presentation of oral argument.

(2) The grievant, the representatives of the grievant, the exclusive representative (if the grievant is a member of the bargaining unit represented by the exclusive representative), and the representatives of the Department are entitled to be present at the hearing. The Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be open to others. Testimony at a hearing shall be given under oath, which any Board member or individual designated by the Board shall have authority to administer.

(3) Each party (including an exclusive representative appearing in the proceedings) shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board, an agency shall promptly make available at the hearing or by deposition any witness under its control, supervision, or responsibility, except that if the Board determines that the presence of such witness at the hearing is required for just resolution of the grievance, then the witness shall be made available at the hearing, with necessary costs and travel expenses paid by the Department.

(4) During any hearing held by the Board, any oral or documentary evidence may be received, but the Board shall exclude any irrelevant, immaterial, or unduly repetitious evidence, as determined under section 556 of title 5.

(5) A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings.

(6) In those grievances in which the Board does not hold a hearing, the Board shall afford to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to the decision by