

**FOREIGN SERVICE LABOR RELATIONS BOARD  
WASHINGTON, D.C.**

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**AMERICAN FOREIGN SERVICE ASSOCIATION  
(Union)**

**and**

**U.S. DEPARTMENT OF STATE  
AGENCY FOR INTERNATIONAL DEVELOPMENT  
Washington, D.C.  
(Agency)**

**FS-NG-15**

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**DECISION AND ORDER NEGOTIABILITY ISSUES**

**April 12, 1991**

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**Before Chairman McKee and Members Denenberg and Greenbaum.**

**I. Statement of the Case**

This case is before the Foreign Service Labor Relations Board (the Board) on a petition for review of negotiability issues filed by the Union under section 1007(a)(3) of the Foreign Service Act of 1980 (22 U.S.C. §§ 3901-4173) (the Act). The Agency did not file a statement of position.

For the following reasons, we find that only one proposal contained in the petition for review is properly before us. That proposal, which requires the Agency's proposed changes to the Senior Foreign Service Handbook to be submitted as a "package" for bargaining, is negotiable. The remaining proposals are not appropriate for Board review and must be dismissed, without prejudice to the refiling of the petition at such time as the conditions for Board review are met.

**II. Background**

In its petition for review, the Union explains that the Agency proposed to amend provisions of the Foreign

Service Handbook Chapter, HB 25, Ch. 38, including changes to the Minister-Counselor Class (MC) time-in-class (TIC) policy. The Union's proposals were made in response to the Agency's proposed amendments.

Enclosed with the petition for review are several documents: (1) an Agency letter to the Union purporting to clarify the matters in dispute; (2) the Union's request to the Agency for written allegations as to the negotiability of its proposals; and (3) the Agency's declaration of nonnegotiability. An examination of these documents indicates that only one Union proposal is properly before us.

In a September 5, 1990, letter to the Union, the Agency stated that it had "before it only one proposal and [had] received only one documented proposal from [the Union] . . . ." Exhibit A to Petition for Review at 1. The Agency referred to the Union's "proposal set forth in its August 8 letter . . . ." Id. 1/ The Union responded that the parties had been negotiating over the following "three proposals[]" (Exhibit B to Petition for Review (September 24, 1990 letter):

1. Extension of the senior threshold window from 7 to 8 years . . . .
2. Extension of the MC TIC to a maximum of 12 years . . . .
3. Renegotiation of Handbook 25, Chapter 38 in its entirety . . . .

Id. The Union also asserted that it previously had requested allegations of nonnegotiability from the Agency.

In response to the Union's letter, the Agency stated:

. . . the following proposal set forth in [the Union's] August 8, 1990, letter is non-negotiable:

"The Employer will submit proposals on the issue of time-in-class (TIC) policy changes amending

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1/ The record before us does not contain a copy of the August 8, 1990, letter.

Handbook 25, Chapter 38, Senior Foreign Service, as a package which includes all of the Agency's proposed revisions concerning other sections of this chapter.

The Employer and AFSA will negotiate all proposed revisions to Handbook 25, Chapter 38 in toto at a mutually agreed time and place."

Exhibit C to Petition for Review at 1 (October 1, 1990 letter). The Agency contended that the proposal did not concern a condition of employment because it addressed a matter specifically provided for by statute. It also stated that the "change in the MC TIC is . . . outside the scope of . . . bargaining because . . . none or no significant number of the persons to which [sic] it relates are in the bargaining unit." Id. Finally, the Agency asserted that the proposal was inconsistent with its rights under the Act.

Subsequently, the Union filed the petition for review now before us, in which it offered the following proposals:

- 1) that adversely affected employees be granted limited career extensions (LCE's), and/or
- 2) that the implementation date of the MC TIC policy change be made retroactively to less[en] the adverse impact on affected employees.

Additionally, [the Union] proposed that the MC TIC policy changes be submitted as a package that includes all of AID's proposed revisions . . . .

Petition for Review at 1. As indicated previously, the Agency did not file a statement of position in response to the petition for review.

After careful review and consideration of the petition for review and the documents submitted by the Union, we find that the only proposal properly before us is the Union's proposal that "the MC TIC policy changes be submitted as a package that includes all of AID's proposed revisions to the Chapter." Id. 1. We note two things.

First, it is not clear that the Agency declared nonnegotiable any proposal other than the one requiring the Agency's changes be submitted as a package. The Agency's

allegation of nonnegotiability specifically refers only to that proposal.

Second, the proposals set forth by the Union in the petition for review are not the same proposals for which it sought a declaration of nonnegotiability. There is no evidence in the record that the Union submitted the proposals in the petition to the Agency or otherwise requested a declaration as to their negotiability.

Section 1424.1 of the Board's Regulations, 22 C.F.R. § 1424.1 sets forth the following conditions governing review of negotiability issues:

If the [Agency] is involved in collective bargaining with an exclusive representative and alleges that the duty to bargain in good faith does not extend to any matter proposed to be bargained because, as proposed, the matter is inconsistent with applicable law, rule or regulation the exclusive representative may appeal the allegation to the Board . . . .

Insofar as the Union's proposals, other than that relating to bargaining over changes to the Handbook as a package, were not submitted to the Agency or declared by the Agency to be nonnegotiable, the conditions governing review of those proposals have not yet been satisfied. Consequently, the petition for review of these proposals will be dismissed without prejudice to the refiling of a petition at such time as the conditions governing review are satisfied.

We turn now to the one proposal that is properly before us.

### III. Proposal 2/

[T]he MC TIC policy changes be submitted as a package that includes all of AID's proposed revisions to the Chapter.

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2/ As noted previously, the Agency declared nonnegotiable a second sentence in the provision: that all proposed revisions be negotiated at a mutually agreed time and place. As the Union did not reference this sentence in its petition for review, we do not view this matter as before us and we make no findings as to its negotiability.

A. Position of the Parties

As noted previously, the Agency asserts that the proposal is nonnegotiable because it does not concern a condition of employment and because it violates its rights under the Act. Specifically, it argues that the proposal interferes with its rights to determine the Agency's organization, to determine the number of persons in the Foreign Service or in the Agency, to determine the personnel by which Agency operations are conducted, and to retain individuals in the Foreign Service.

The Union offered no argument concerning the proposal in its petition for review.

B. Analysis and Conclusions

As plainly worded, the proposal would require the Agency to submit all its proposed changes to the MC TIC policy at one time.

Although the Agency asserted that the proposal was nonnegotiable for various reasons, it did not file a statement of position with the Board explaining its claims. In particular, although the Agency asserted that the proposal concerned a matter that was specifically provided for by statute, the Agency did not specify the statute on which it relied. Similarly, although it asserted that the change in the MC TIC did not affect bargaining unit members or significant numbers of unit members, it is apparent that the parties bargained over this, and the Agency sought proposals concerning the matter. In fact, the Agency specifically stated that it was willing to address "the effective date of the new TIC policy" as "proposals as soon as they [were] presented as such." Exhibit A to Petition for Review at 1 (September 5, 1990 letter).

Finally, it is not apparent that requiring proposed changes to be submitted as a package interferes in any way with any of the Agency's rights under the Act. The proposal would not require the Agency to bargain over any particular Union proposal or in any other way prevent the Agency from exercising its rights under the Act. Moreover, the proposal would not bind the Agency to the proposed changes as initially submitted to the Union. That is, the proposal would not preclude either party from modifying its position during the bargaining process.

The Agency has not demonstrated, and there is no basis on which to conclude, that the disputed proposal is nonnegotiable. Accordingly, we find the proposal to be within the duty to bargain.

IV. Order

The Agency shall upon request, or as otherwise agreed to by the parties, negotiate concerning the proposal.<sup>3/</sup> The petition for review, insofar as it addresses other proposals, is not properly before the Board and is dismissed without prejudice to the refiling of a petition if the conditions governing review are satisfied.

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<sup>3/</sup> In finding the proposal to be within the duty to bargain, we make no judgment as to its merits.

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**FS-NG-15**

**STATEMENT OF SERVICE**

I hereby certify that copies of the Decision and Order of the Foreign Service Labor Relations Board in the subject proceeding have this day been mailed to the following parties:

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DATED: April 12, 1991  
WASHINGTON, D.C.

Deborah D. Johnson  
Deborah D. Johnson  
Legal Technician