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EXECUTIVE ORDER 11636

Employee-Management Relations in the Foreign Service of the United States

WHEREAS, the public interest requires high standards of performance by the members of the Foreign Service of the United States and the continuous development and implementation of modern and progressive work practices to facilitate their improved performance and efficiency; and

WHEREAS, the effective participation by the men and women of the Foreign Service in the formulation of personnel policies and procedures affecting the conditions of their employment is essential to the efficient administration of the Foreign Service and to the well-being of its members; and

WHEREAS, the unique conditions of Foreign Service employment require a distinct framework for the development and implementation of modern, constructive and cooperative relationships between management officials in the foreign affairs agencies and organizations representing Foreign Service employees; and

WHEREAS, subject to law and the paramount requirements of public service, effective employee-management relations within the Foreign Service require a clear statement of the respective rights and obligations of organizations and agency management; and

WHEREAS, the effectiveness of the foreign affairs agencies is well served by measures which stress their essential unity of purpose:

NOW, THEREFORE, by virtue of the authority vested in me by the Constitution and statutes of the United States, including sections 3301 and 7301 of title 5, United States Code, and section 202 of the Revised Statutes (22 U.S.C. 2656), and as President of the United States, I hereby direct that the following policies shall govern the foreign affairs agencies in all dealings with Foreign Service employees and organizations representing them.

GENERAL PROVISIONS

SECTION 1. *Policy.* (a) Each employee has the right, freely and without fear of penalty or reprisal, to form, join, and assist any organization as defined herein or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in this Order, the right to assist an organization extends to participation in the management of the organization and acting for the

organization in the capacity of an organization representative, including presentation of its views to officials of the executive branch, the Congress, or other appropriate authority. The head of each foreign affairs agency shall take the action required to assure that employees in the agency are apprised of their rights under this section, and that no interference, restraint, coercion, or discrimination is practiced within his agency to encourage or discourage membership in an organization.

(b) Paragraph (a) of this section does not authorize participation in the management of an organization or acting as a representative of an organization by a management official or a confidential employee, or by an employee when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

SEC. 2. *Definitions.* When used in this Order, the term—

(a) "Foreign affairs agency" means the Department of State, the United States Information Agency, the Agency for International Development and its successor agency or agencies;

(b) "Employee" means an officer or employee of the Foreign Service, wherever serving, other than an alien clerk or employee or consular agent, appointed in or assigned to a foreign affairs agency under authority of the Foreign Service Act of 1946, as amended; the Foreign Assistance Act of 1961, as amended; or Public Law 90-494;

(c) "Management official" means an individual who:

(1) is a chief of mission or principal officer;

(2) is serving in a position in a foreign affairs agency to which he has been appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

(3) occupies a position which in the sole judgment of the head of his foreign affairs agency is of comparable importance;

(4) is serving as a deputy to any of the above; or

(5) is engaged in the administration of this Order or in the formulation of the personnel policies and programs of his agency;

(d) "Confidential employee" means an individual who assists and acts in a confidential capacity to a management official who formulates, determines or effectuates management policies in the field of employee-management relations;

(e) "Agency management" means management officials and confidential employees in a foreign affairs agency;

(f) "Organization" means a lawful organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their members, but does not include an organization which—

(1) consists solely of management officials;

(2) assists or participates in a strike against the Government of the United States or any agency thereof, or imposes a duty or obligation to conduct, assist or participate in such a strike;

(3) advocates the overthrow of the constitutional form of government in the United States; or

(4) discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin.

(g) "Secretary" means the Secretary of State;

(h) "Board" means the Board of the Foreign Service;

(i) "Commission" means the Employee-Management Relations Commission established under section 5 of this Order; and

(j) "Public member" means an individual who is not an employee of the United States Government (other than as a special Government employee) and who is selected to serve on a disputes panel or a grievance panel established under this Order.

SEC. 3. *Application.* (a) This Order applies to all employees except as provided in subsection (b) below.

(b) The head of a foreign affairs agency may, in his sole judgment, suspend temporarily any provision of this Order with respect to any post, bureau, office, or activity, in the United States or abroad, when he determines in writing in emergency situations that this is necessary in the national interest, subject to the conditions he prescribes. Such suspension shall not operate to deny access by an employee to the grievance procedures established under section 10 of this Order.

ADMINISTRATION

SEC. 4. *Board of the Foreign Service.* (a) The Board shall, in accordance with the regulations prescribed by the Secretary under section 16 of this Order:

(1) consider major policy issues arising in the administration of this Order, appeals on substantive aspects of personnel policy or procedure, proposed amendments to this Order and such other matters as it deems appropriate to assure the effectuation of the purposes of this Order;

(2) make recommendations on regulations for the implementation of this Order;

(3) interpret this Order and the regulations of the Secretary, except as provided in section 5; and

(4) perform such additional functions relating to the administration of this Order as the Secretary may from time to time prescribe.

(b) In the performance of its functions under this Order, the Board (including committees and panels thereof) may:

(1) obtain views from interested agencies, organizations and other parties, orally or in writing, as it may deem necessary and appropriate;

(2) receive staff assistance from a secretariat which shall be responsible directly to the Chairman of the Board and otherwise independent of foreign affairs agency management; and

(3) request and use the services and assistance of other agencies in accordance with the Secretary's regulations.

SEC. 5. *Employee-Management Relations Commission.*

(a) There is hereby established, as a committee of the Board, an Employee-Management Relations Commission composed of those Board members or participants representing the Department of Labor, the Civil Service Commission, and the Office of Management and Budget. The representative of the Office of Management and Budget shall be the Chairman of the Commission.

(b) The Commission shall:

(1) decide questions relating to the eligibility of organizations for recognition under this Order;

(2) supervise elections to determine whether an organization should be recognized as the exclusive representative of the employees in a foreign affairs agency, and certify the results;

(3) decide complaints of alleged unfair practices and alleged violations of the standards of conduct for organizations; and,

(4) decide questions of whether an obligation to consult exists under section 8 of this Order with respect to particular issues.

(c) In any matter arising under paragraph (b) of this section, the Commission shall have final authority and may require an agency or an organization to cease and desist from a violation of this Order and require it to take such affirmative action as the Commission considers appropriate to effectuate the policies of this Order.

(d) The Commission shall prescribe regulations needed to administer its functions under this section. Substantive regulations of the Commission shall be subject to review by the Board.

SEC. 6. *Disputes Panel.* (a) The Chairman of the Board shall designate a panel which shall assist in resolving disputes arising in the course of consultation under section 8. The panel shall consist of two members of the Foreign Service, neither of whom shall be a management official, a confidential employee or an organization official; one representative of the Department of Labor; one member of the Federal Service Impasses Panel; and one public member. The Chairman of the Board shall designate the Chairman of the panel.

(b) In any case where an appeal is made under section 9, the panel shall make findings of fact and recommendations to the Board for its consideration in deciding the appeal. In the performance of this function, the panel may, in cases it deems appropriate, attempt to mediate disputes and to promote agreements between representatives of foreign affairs agencies and recognized organizations.

RECOGNITION

SEC. 7. *Recognition in General.* (a) An organization seeking recognition shall:

(1) submit to the Commission and to the foreign affairs agency concerned copies of its constitution and by-laws, a statement of its objectives and a roster of its officers; and

(2) establish to the satisfaction of the Commission, in its sole discretion, that the organization functions under acceptable democratic and ethical standards and that it meets the other requirements of this Order.

(b) Elections may be held to determine whether—

(1) an organization should be recognized as the exclusive representative of employees in a foreign affairs agency, other than management officials and confidential employees;

(2) an organization should replace another organization as the exclusive representative; or

(3) an organization should cease to be the exclusive representative.

All elections shall be conducted under the supervision of the Commission, or persons designated by the Commission, and shall be by secret ballot. Each employee eligible to vote shall be provided the opportunity to choose the organization he wishes to represent him from among those on the ballot, or to vote not to have a representative. The results of the election shall be determined on the basis of the majority of valid ballots cast.

(c) A foreign affairs agency shall accord recognition to an organization certified by the Commission following an election as the exclusive representative of the employees in the foreign affairs agency.

(d) An organization which is the exclusive representative of the employees in a foreign affairs agency is entitled to act for all employees in the agency, other than management officials and confidential employees, in collective dealings with agency management as provided for in this Order. It is responsible for representing the interests of all such employees without discrimination and without regard to organization membership.

(e) Nothing in this Order shall:

(1) preclude an employee, regardless of whether he is a member of an organization, from bringing matters of personal concern to the attention of appropriate officials under applicable law, rule, regulations, or established foreign affairs agency policy; or from choosing his own representative in a grievance or other administrative adjudication;

(2) preclude or restrict consultations and dealings between a foreign affairs agency and a veterans' organization with respect to matters of particular interest to employees with veterans preference; or

(3) preclude a foreign affairs agency from consulting or dealing with a religious, social, fraternal, professional or other lawful association, not qualified for recognition, with respect to matters or policies which involve individual members of the association or are of particular applicability to it or its members. Consultations and dealings under this subparagraph shall be so limited that they do not assume the character

of formal consultation on matters of general employee-management policy, or extend to areas where recognition of the interests of one employee group may result in discrimination against or injury to the interests of other employees.

CONSULTATION AND APPEALS

SEC. 8. *Consultation.* (a) A foreign affairs agency and a recognized organization, through appropriate representatives, shall, to the extent consistent with applicable law and regulations, consult in good faith regularly and prior to the adoption of proposed or revised personnel policies and procedures, including grievance procedures, which affect working conditions of employees. When a personnel policy or procedure is for application jointly to employees in more than one foreign affairs agency, the consultations shall be held jointly between representatives of the foreign affairs agencies involved and representatives of the recognized organizations in those agencies. The results of consultations shall be reduced to writing and signed by the parties.

(b) Foreign affairs agency management shall reserve the right in accordance with applicable law and regulations:

(1) to direct employees of the agencies;

(2) to hire, promote, transfer, assign, and to retain employees in positions within the foreign affairs agencies and to suspend, demote, discharge or take other disciplinary action against employees;

(3) to relieve employees from duties because of lack of work or for other legitimate reasons;

(4) to maintain the efficiency of the Government operations entrusted to them;

(5) to determine the methods, means, and personnel by which such operations are to be conducted; and

(6) to take whatever actions may be necessary to carry out the missions of the agencies in situations of emergency.

The foregoing rights reserved to foreign affairs agency management shall also be applicable in the administration of agreements reached under paragraph (a) of this section.

(c) The obligation to consult does not include matters with respect to the mission of a foreign affairs agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. Consultations will not extend to foreign policy matters or other substantive responsibilities of the foreign affairs agencies. This paragraph shall not preclude consultation with respect to providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change.

SEC. 9. *Appeals.* (a) When consultation under section 8 of this Order does not result in agreement with respect to substantive aspects of a personnel policy or procedure, a recognized organization may appeal the management decision on the matter to the Board in writing. The

Board will consider on appeal any matter that it determines is substantive in nature. A substantive matter for purposes of this section is a matter that creates, defines or changes rights of employees or organizations or the conditions relating to such rights. In the consideration of such an appeal, the Board will utilize a disputes panel as provided in section 6 of this Order. The decision of the Board shall be final, unless overruled by the head of the foreign affairs agency concerned.

(b) No member of the Board who is directly responsible for personnel operations in a foreign affairs agency shall be eligible to participate in the consideration of an appeal under this section.

(c) Foreign affairs agency management shall defer or suspend the implementation of a management decision which is appealed under this section during the pendency of the appeal, except to the extent that the head of the foreign affairs agency determines that immediate implementation of a decision being appealed is required in the national interest.

SEC. 10. *Grievances.* The foreign affairs agencies, after consultation under section 8 with representatives of recognized organizations, shall establish procedures for the fair and impartial resolution of employee grievances. Employee grievances shall include, but shall not be limited to complaints in which an employee has alleged that it is necessary to correct his record in order to remove or prevent an injustice. Such procedures shall include provision for informal steps to resolve grievances directly with management officials as well as formal steps within the agency when grievances are not resolved through informal means. Formal grievances shall be considered and decided by a panel which shall include public membership and which shall be independent of foreign affairs agency management other than the Secretary in the performance of its functions.

SEC. 11. *Periodic Conferral and Review.* (a) In addition to the consultation described in section 8, the Secretary shall, by regulation, establish procedures for reasonable access to the management of foreign affairs agencies by recognized organizations for the purpose of:

(1) exchanging information and offering suggestions relating to the improvement of agency operations and effectiveness and the establishment of administrative policies that will serve the public interest;

(2) discussing the operation of this Order and procedures established thereunder;

(3) considering ways in which relationships between foreign affairs agencies and recognized organizations may be improved and strengthened; and

(4) reviewing together with foreign affairs agencies and recognized organizations annually the relationships established pursuant to this Order in order to assure that their evolution takes into account developments elsewhere in the Federal Government as well as the special needs of the Foreign Service.

Conferral under this section shall not extend to matters excluded from the obligation to consult under section 8(c) of this Order, in the absence of agreement by the parties.

(b) Recommendations by management or organizations following conferral under this section, including recommendations for amendments to this Order, shall be submitted to the Board for its consideration. Based upon the findings of the Board, the Secretary shall, from time to time, make reports and recommendations to the President.

CONDUCT OF ORGANIZATIONS AND MANAGEMENT

SEC. 12. *Standards of Conduct for Organizations.*

(a) In order to be eligible for recognition an organization must be free from corrupt influences and practices and influences opposed to democratic principles. In addition, it must maintain democratic procedures and practices, including provisions for periodic elections to be conducted subject to recognized safeguards as well as provisions defining and securing the rights of individual members to participation in the affairs of the organization, to fair and equal treatment under the governing rules of the organization and to fair process in disciplinary proceedings.

(b) A recognized organization shall file with the Commission financial and other reports, provide for bonding of officials and employees of the organization and comply with trusteeship and election standards, in accordance with regulations prescribed by the Commission. These regulations shall conform generally to those applicable to unions in the private sector and to labor organizations in the Federal service.

SEC. 13. *Unfair Practices.* (a) Agency management shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Order;

(2) encourage or discourage membership in an organization by discrimination in regard to hiring, tenure, promotion, or other conditions of employment;

(3) sponsor, control, or otherwise assist an organization, except that a foreign affairs agency may furnish customary and routine services and facilities when consistent with the best interests of the foreign affairs agency, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

(4) discipline or otherwise discriminate against an employee because he has filed a complaint or given testimony under this Order;

(5) refuse to accord recognition to an organization qualified for such recognition; or

(6) refuse to consult, or confer, with a recognized organization as required by this Order.

(b) An organization shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of his rights assured by this Order;

(2) attempt to induce foreign affairs agency management to coerce an employee in the exercise of his rights under this Order;

(3) coerce, attempt to coerce, or discipline, fine, or take other economic sanction against a member of the organization as punishment or reprisal for, or for the purpose of hindering or impeding his work performance, his productivity, or the discharge of his duties owed as an officer or employee of the United States;

(4) call or engage in a strike, work stoppage, or slowdown; picket an agency in an employee-management dispute; or condone any such activity by failing to take affirmative action to prevent or stop it;

(5) discriminate against an employee with regard to the terms or conditions of membership because of race, color, creed, sex, age, or national origin; or

(6) refuse to consult, or confer, with a foreign affairs agency as required by this Order.

MISCELLANEOUS PROVISIONS

SEC. 14. *Use of Official Time.* Solicitation of membership or dues, and other internal business of an organization, shall be conducted during the non-duty hours of the employees concerned. The Secretary shall establish by regulation reasonable limitations upon the use of official time for consultation and conferral under this Order.

SEC. 15. *Allotment of Dues.* When a foreign affairs agency and the organization agree in writing, a foreign affairs agency may deduct the regular and periodic dues of an organization recognized under this Order from the pay of members of the organization who make a voluntary allotment for that purpose. Such an allotment is subject to the regulations of the Civil Service Commission, which shall include provision for the employee to revoke his authorization at stated six-month intervals. Such an allotment terminates when the dues withholding agreement between a foreign affairs agency and the organization is terminated or ceases to be applicable to the employee.

SEC. 16. *Regulations.* The Secretary, after consultation with the heads of other foreign affairs agencies and with representatives of organizations and with the advice of the Board, is authorized to prescribe regulations for the implementation of this Order. The Secretary's regulations shall become effective no later than 120 days after the effective date of this Order.

SEC. 17. *Agency Implementation.* No later than 90 days after the effective date of the regulations prescribed under section 16, each foreign affairs agency shall issue appropriate implementing policies and regulations consistent with this Order and the regulations prescribed by the Secretary. Such foreign affairs agency regulations shall include but shall not be limited to a clear statement of the rights of the foreign affairs agency's employees under this Order; procedures with respect to consultation and conferral with organizations; policies with respect to the use of foreign affairs agency facilities by organizations; and policies and practices regarding consultation with other associations and individual employees. The foreign affairs agencies shall consult with representatives of organizations in the formulation of these policies and regulations.

SEC. 18. *Amendments to Executive Orders.* (a) Section 3(b) of Executive Order No. 11491 of October 29, 1969 (34 F.R. 17605), as amended, is hereby further amended by adding a new item (5) as follows:

"(5) The Foreign Service of the United States: Department of State, United States Information Agency and Agency for International Development and its successor agency or agencies."

(b) Section 21 of Executive Order No. 11264 of December 31, 1965 (31 F.R. 2), as amended, is hereby further amended as follows:

(1) by revising subsection (d) to read as follows:

"(d) Each member designated pursuant to subsection (b)(1), (b)(2) or (b)(3) above, and each representative designated pursuant to subsection (c) above, shall be chosen from among the officials of the department or agency concerned who are not below the rank of an Assistant Secretary or who are occupying positions of comparable responsibility, except that alternate members and representatives may be designated who do not hold such rank or occupy such positions.";

(2) by adding a new subsection (f) as follows:

"(f) Designation of members pursuant to subsections (b)(1) and (b)(3) shall be made after consultation with organizations recognized as the representatives of Foreign Service employees so that the Secretary and the Director may take into account their views."

SEC. 19. *Effective Date.* This Order shall become effective upon publication in the FEDERAL REGISTER.

Richard Nixon

THE WHITE HOUSE,
December 17, 1971.

[FR Doc.71-18924 Filed 12-23-71;9:03 am]