UNION REPRESENTATION IN THE FOREIGN SERVICE

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The views expressed in this paper are those of the author and not necessarily those of the American Federation of Government Employees or the United States Information Agency
This paper presents the views of an advocate. It seeks to defend the proposition that union representation has substantially improved conditions of employment in the Foreign Service and in so doing has contributed significantly to the public interest.

Union representation of Civil Service employees in the foreign affairs agencies parallels fairly closely the history of Federal employee unionization since World War II. Local unions of the American Federation of Government Employees (AFGE) and the National Federation of Federal Employees (NFFE) were formed in the 1940s and 1950s in the Department of State, the U.S. Information Agency, the Agency for International Development and their predecessor organizations. Informal recognition and consultation occurred on an ad hoc basis during the 1950s. Following the issuance of Executive Order 10988 by President Kennedy in 1962, Civil Service employees in USIA, AID, and to a lesser extent in the State Department organized and bargained collectively within the framework of the Federal employee Executive Order system.

Under Executive Order 11491 as amended, the major successor to the Kennedy Order, AFGE holds exclusive recognition for some 4,000 Civil Service employees in five bargaining units in USIA, AID, the Department of State, and the Overseas Private Investment Corporation. The AFGE units comprise all of the eligible domestic service employees in the foreign affairs agencies with the exception of 150 radio engineers in the Voice of America, who are represented by NFFE, and 2,000 Civil Service employees in the Department of State who are not represented in exclusive recognition units. In addition, AFGE now represents 2,300 Foreign Service employees in USIA under Executive Order 11636 for an overall total of 6,300 employees in the foreign affairs agencies.

Union representation of Foreign Service employees is a much more recent development. While in USIA Foreign Service members have played an active role in AFGE Local 1812 since it was chartered in 1958, it was only in the early 1970s that Foreign Service employees throughout the foreign affairs agencies began to look to some form of collective bargaining as a means of participating in the formulation of personnel policies affecting their conditions of employment.

This more recent stage of foreign affairs employee unionization is the concern of this paper and can be discussed as follows: (1) the organizations and authorities that have been established in Foreign Service labor-management relations—notably Executive Order 11636, the Employee-Management Relations Commission of the Board of the Foreign Service, and the Foreign Service Grievance Board; (2) the due process issues that have been the primary motivation for Foreign Service employees to turn to unions for representation; and (3) a brief assessment of current directions in Foreign Service collective bargaining.

Executive Order 11636

Executive Order 11636, Employee-Management Relations in the Foreign Service, was promulgated by President Richard Nixon on December 17, 1971. It was issued as a result of efforts by AFGE to organize approximately 400 Foreign Service employees under Executive Order 11491 the previous year. In September and October 1970, AFGE
had filed representation petitions for Foreign Service employees in the African Bureau and the African Office of the Bureau of Intelligence Research in the Department of State and the Office of International Training in AID. The petitions led the State Department to intervene with the Department of Labor and to request that the Foreign Service be exempted from the provisions of Executive Order 11491. Hearings on the Department's request were held before the Federal Labor Relations Council in November, 1970.

During the hearings the Department's views were advanced by then Deputy Secretary of State for Administration William B. Macomber. In a letter to the Council on October 14, 1970 Ambassador Macomber invoked the "unique relationship of the Foreign Service to the President" as the basis for requesting exclusion of the Foreign Service from the Civil Service labor-management system:

In order for the Foreign Service to function effectively, a more intimate relationship must be maintained between the President, the Secretary of State, and the personnel who are entrusted with the execution of United States foreign policy. We fully recognize the benefits of providing officers and employees of the Foreign Service with an opportunity to participate in the formulation and implementation of personnel policies which affect them. However, we do not believe that the national interest is best served by participation within the context of the present Executive Order. 1

In a follow-up memorandum on November 9, 1970 the Department added other objections -- the "inappropriateness of negotiated agreements" between the Foreign Service and the Secretary of State and an aversion to such third party procedures as unit determination hearings, unfair labor practice remedies, arbitration of grievances, and impasse procedures. Finally the Department drew a parallel between the Foreign Service and the military services and advanced perceived requirements of national security.

Thus responsiveness, mobility, versatility and disciplined execution of the foreign policy decisions of the President are qualities which set the Foreign Service apart ...Although the Foreign Service is by no means a military organization...the recent phenomenon of the commingling of foreign affairs policy with military policy into what has become known as national security policy is a dramatic example of the fusion of foreign policy with other national objectives and interests. To foster and encourage the development of a formal adversary relationship between the President and his Secretary of State on the one hand and the Foreign Service personnel corps on the other could be detrimental to our national security. 2

For its part, AFGE viewed the Department's argument of Foreign Service uniqueness as an effort to evade "enforceable accountability" for its violations of the rights of employees and as justification of a system which -- however much lip service was paid to employee participation -- was paternalistic, capricious, and discriminatory against Foreign Service personnel.

As then AFGE National President John F. Griner summarized the union's position:

After careful study, we have concluded that we must oppose Mr. Macomber's proposals not only (1) because they are inequitable, (2) because they
discriminate against Foreign Service personnel in the equal enjoyment of due process, but also (3) because they violate the most fundamental objectives and provisions of the Foreign Service Act of 1946, as amended ... the State Department is opposed to any kind of rational, systematic, structured mechanism which can be called into operation by employees to safeguard their rights as employees. 3

While the deliberations before the Federal Labor Relations Council were taking place the American Foreign Service Association (AFSA) joined the Department in a parallel move to stall the holding of representation elections by intervening in AFGE's petitions as a professional association rather than as a labor organization under Executive Order 11491. As AFSA's attorney Jerome Ackerman stated: "(w)hether it is a labor organization within the meaning of the Regulations is irrelevant for the purpose of determining whether AFSA should be permitted to participate as an intervenor in the representation proceeding that may ensue as a result of the filing of the five petitions by AFGE."4 A test of AFSA's status as a labor organization under the Order was never undertaken. On March 1, 1971, President Nixon issued a "Memorandum" excluding the Foreign Service from the provisions of Executive Order 11491.

The decision by the White House to bar the Foreign Service from the Civil Service labor-management system was taken, however, with the understanding that separate procedures for an "employee-management" system in the Foreign Service would be established and that such procedures would be approved by the Federal Labor Relations Council. Throughout 1971 the Department, the White House, the Federal Labor Relations Council, and AFSA worked to establish a separate system that eventually, despite the vigorous objections of AFGE, was issued as Executive Order 11636.

The new Order differed substantially from Executive Order 11491. Instead of a "labor-management" system, the Foreign Service would have an "employee-management" system. (Words such as "labor," "union," "collective bargaining" and "negotiated agreement" do not appear in Executive Order 11636.) Representation rights would be granted to professional associations such as AFSA, which could then qualify as a labor organization under Executive Order 11491 and which was viewed by many AFGE members as a "company union." Instead of negotiations, "consultations" would be authorized between an elected exclusive representative and management; the results of these consultations could from time to time be reduced to writing (a theory of so-called continuous or "rolling negotiations" which AFGE opposed and which has since become a source of considerable distress to foreign affairs agency management). Bargaining unit definition processes were obviated through the identification of State, USIA, and AID as separate units whose community of interest was assumed by virtue of their being separate agencies. Definitions of "employee," "management official," and "confidential employee" were drawn so as to permit large numbers of senior officers (historically partisan to AFSA) to vote and otherwise act as members of the exclusive representation units. Finally, while the Federal Labor Relations Council (for the Civil Service) can hardly be considered to be as independent as the National Labor Relations Board is for private sector workers, the third party authority for the Foreign Service was in fact established to be identical with management. The Board of the Foreign Service, a seven-member body chaired by the Deputy Secretary of State, was given the authority to administer the
Order through an Employee-Management Relations Commission acting "as a committee of the Board." The Commission is comprised of a representative of the Department of Labor, the Civil Service Commission, and the Office of Management and Budget with the representative of OMB serving as Chairman.

In 1972, representation elections under Executive Order 11636 were held in State, USIA, and AID between AFGE and AFSA. AFSA prevailed in all three elections winning certification and exclusive representation rights for some 7,000 Foreign Service employees in State, 2,300 employees in USIA, and 1,700 employees in AID. In 1975, following the lapse of the Order's two year certification bar in USIA, AFGE Local 1812 challenged AFSA in a second election and prevailed by a substantial eight to five margin. At the present time Foreign Service representation is split with AFSA representing Foreign Service employees in State and AID and AFGE representing Foreign Service employees in USIA.

The Foreign Service Grievance Board

The same concerns that led employees in 1970 to seek union representation as a means of improving their conditions of employment led at the same time to efforts within the Congress to establish legislated grievance procedures for the Foreign Service.

On June 8, 1971 Senator Birch Bayh, with Senators John Sherman Cooper, Hubert Humphrey, and Hugh Scott as co-sponsors, introduced S. 2023, a bill "to provide for a procedure to investigate and render decisions with respect to grievances and appeals of employees of the Foreign Service." In response to widespread press attention to Foreign Service personnel injustices and in an effort to head off the legislation, the Department on August 12, 1971 implemented what Ambassador Macomber called "interim grievance regulations providing grievance machinery far advanced from previously existing procedures available to personnel in the Foreign Service." It was the Department's intention that the hastily drawn up "interim procedures" would be replaced by permanent procedures to be developed with the exclusive representative under Executive Order 11636. It was definitely not the Department's intention that grievance procedures be legislated.

Their reasons for doing so varied, but by fall some twenty Senators from both parties joined in co-sponsoring what became known as the Bayh Bill. A second bill with slightly different provisions was introduced by Senators Frank Moss and Jack Miller. Hearings on both bills were held by the Senate Foreign Relations Committee in October, 1971. In requesting the hearings Senator Humphrey made the case for legislated procedures as follows:

Prompted by serious injustices in management-employee relations within the State Department, I joined ... in introducing on June 8 a bill to establish a formal set of grievance procedures for Foreign Service personnel. The bill S 2023 is designed to bring the Foreign Service in line with the standard of management-employee relations within the Federal government. This standard, regrettably, has not been followed to the letter within the Foreign Service. In fact management's disregard for the basic rights of the employee has resulted in considerable human tragedy.

Senator Bayh was equally to the point. The purpose of the legislation was "to bring about a significant change in the operation of State Department personnel
policy," because "it has become increasingly evident that State Department employees have not been extended their full order of employee rights as guaranteed by Supreme Court decisions." The reluctance of the Department to grant employee due process was indicated by the fact that on "only one occasion in the past 15 years has an aggrieved officer been granted a hearing, and then only after a painfully slow process of negotiation with Department personnel officials."

Bayh, like Macomber, drew a parallel between the Foreign Service and the Armed Forces but where Macomber used the analogy to justify exclusion of the Foreign Service from a Civil Service labor-management system, Bayh used it to legitimize application of military due process standards to the Foreign Service. "I believe that the same protection of rights and careers, the same fairness, justice, and redress from reprisal and discrimination that we extend to members of the Armed Forces should be extended to the members of this distinguished service," Bayh testified during the hearings. 10

The bill's sponsors were also quite critical of the State Department's interim grievance procedures. "Apparently in response to the embarrassment created by the introduction of this bill," Humphrey wrote, "the Department announced a system of 'interim grievance procedures' which ... are a grossly inadequate compromise, which in many ways leaves the employee worse off than he was before the interim measures were put into effect." 11 Bayh too questioned the interim procedures on the grounds of adequacy and because "the State Department has exempted itself from Executive Order 11491 (leaving) ... no effective means for Department employees to select spokesman who will be truly representative of their sentiments in any negotiations or consultations that might occur." The provisions of his bill, Bayh noted, "incorporate a number of recommendations of both the American Federation of Government employees and the American Foreign Service Association." 12

Both AFGE and AFSA supported the Bayh Bill and testified at length during the hearings. Management officials from the three foreign affairs agencies, numerous individual Foreign Service Officers, veterans organizations and the ACLU also testified making the 342 pages of testimony a comprehensive history of the disputes taking place within the Foreign Service in 1971.

The Bayh Bill passed the Senate overwhelmingly in 1972 only to be blocked in the House. The State Department was successful in inducing Congressman Wayne Hays, chairman of the House Foreign Affairs Subcommittee responsible for foreign affairs agency budget authorizations, to block committee action in the House. In 1973 and 1974 the Senate twice again overwhelmingly passed the Bayh Bill only to be met each time by the Hays/State Department opposition in the House. 13 The following year pressures by AFGE and AFSA were successful, and on November 29, 1975 President Ford signed the 1976 Foreign Relations Authorization Act containing grievance procedures for State, USIA, and AID. The law stated that its purpose was "to provide officers and employees of the Service and their survivors a grievance procedure to insure a full measure of due process, and to provide for the just consideration and resolution of grievances of officers, employees, and survivors." 14

The Foreign Service Grievance Board, comprised of fifteen public members, began to function in June, 1976. The Board is chaired by Alexander Porter a distinguished arbitrator, formerly the permanent umpire for Reynolds Metals and currently a member of the AFL-CIO's internal Disputes Panel.

The differences between the statutory grievance procedures and the old interim procedures are substantial. Under the new Board, hearings may be requested as a matter of right in cases involving disciplinary action or separation from the
Service. In other kinds of cases, the Board may grant hearings at its discretion. Access to relevant records is guaranteed. Limited tenure and probationary appointees may use the grievance procedures. Employees have a right to legal counsel or other representation of their choice. The Board is comprised entirely of persons who are not employees of the foreign affairs agencies, although some are former employees. Finally, grievants who are not satisfied with the decision of the Board have the right of judicial review.

The Foreign Service Grievance Board falls short of the ideal procedures originally sought by AFGE and AFSA and which were reflected in the original Bayh Bill. It offers a third party process for the resolution of employee-management disputes, however, which is far superior to the interim grievance procedures and to the near procedural vacuum that existed prior to 1971.

The Issues -- Foreign Service Due Process

That something was wrong with Foreign Service personnel policies is beyond dispute.

Until the 1970s, Foreign Service officers were subject to selection out from the Service without due process for alleged substandard performance or for mere failure to be promoted within arbitrarily defined periods of time. Selection out was used, contrary to Congressional intentions, for budget-induced reduction in force purposes, to fire employees whose political or policy views were at variance with senior managers, and to bring removal actions, under the guise of performance evaluation, that really should have been disciplinary actions or removals for cause. In addition, classified performance evaluations, called Development Appraisal Reports (DAR), were written annually and given to promotion panels but not to the officers involved. An adverse DAR, which could on occasion be inconsistent with a glowing open performance evaluation, could destroy a career without an officer being able to see or rebut the records leading to his or her selection out.15

In other areas, the State Department was moving to use the Foreign Service Reserve authority to appoint employees whose duties were entirely in the domestic service and who otherwise would be entitled to Civil Service protections. The Department's interest in using the Foreign Service Act for employees in support positions in the United States stemmed from its desire to have the advantages of selection out, mandatory retirement at age 60, and the flexibility in hiring and assignments that are conferred by the Foreign Service Act but are not available under the Civil Service statutes.16 The Department sought legislation to legitimize the use of the reserve authority, and in 1966 hearings were held on a bill introduced by Congressman Wayne Hays to create a single Foreign Service personnel structure in the foreign affairs agencies. Vigorous opposition from AFGE, veterans organizations, and the ACLU was successful in blocking what became widely known as the Hays Bill.17

The abortive Hays Bill was an effort by the Johnson Administration to change the legislation governing personnel policies in the foreign affairs agencies; the approach of the Nixon Administration was quite different. In 1971 the Department and USIA instituted a so-called Foreign Affairs Specialist (FAS) system based on
proposals generated by task forces appointed by Ambassador Macomber. The FAS program instituted management directive the terms of the old Hays Bill without union involvement.  

Selection out and the FAS program were the biggest issues confronting employees, but there were others. Foreign Service employees who chose to marry alien spouses, as many do, were faced with the requirement of submitting resignations -- most of which were viewed as pro forma but some of which were accepted. Women Foreign Service Officers faced clear and statistically demonstrable historical patterns of sex discrimination in the Service. The absence of promotion panel safeguards permitted adjustment of promotion lists to accommodate the political or personal favorites of senior managers. The absence of meaningful grievance procedures meant that such simple mistakes as filing errors and misplaced records could not be successfully challenged. Employee discontent over both personnel policies and public policies (the Foreign Service was not immune to opposition to the Viet Nam war or other attitudinal changes of the 1960s) led to much ferment within the foreign affairs agencies themselves and considerable attention by the press and the Congress.

Efforts to resolve differences through the collective bargaining process having made little headway against the Nixon Administration's views on the relevance of Executive Order 11491 to the Foreign Service, AFGE turned to the courts and the Congress as alternatives.

In 1971, AFGE's Locals in the foreign affairs agencies formed a legal defense fund to raise financing for major suits against the lack of due process in selection out and the arbitrary implementation by management of the FAS program. A National Advisory Committee was formed with former Assistant Secretary of Labor Leo Werts, Ambassador Fulton Freeman, and AFGE National President Clyde M. Webber taking the lead in inviting a distinguished group of Americans from the diplomatic, legal, and labor communities to join the Committee. The fund was named the Charles William Thomas Memorial Legal Defense Fund and chartered as a nonprofit corporation in the District of Columbia; its Board of Directors was comprised of five members each from the two AFGE Locals in State, USIA, and AID. Following fourteen months of scrutiny and delay, the Fund received tax exempt status from the Internal Revenue Service as a charitable organization, marking the first time that a labor-sponsored legal defense fund had been granted "exempt organization status."

The Fund immediately set selection out due process as its primary objective and retained the Washington firm of Hogan and Hartson to represent its interests with State Department management. Again, collective bargaining was attempted without success. In November, 1971 Fund attorneys met with the Director General of the Foreign Service and other senior Department officials. The Fund would agree not to file suit in return for a moratorium on selection out and agreement to bargain on due process procedures. The Department declined the Fund's offer. Suit was subsequently brought, and in 1973, following lengthy and expensive court proceedings, (the suit cost the Thomas Fund over $50,000) U.S. District Court Judge Gerhard Gesell rendered a decision declaring selection out procedures unconstitutional. In his opinion in Lindsey v Kissinger, Judge Gesell stated:

It is fair inference from ... the record that although a conscientious effort is undoubtedly made to assure uniform and fair evaluations, an officer's evaluation may reflect his inability to function under an assignment inconsistent with his experience and training, or personality conflicts with an unreasonable superior, or the evaluating officer's own lack of experience and understanding of an officer's responsibilities, etc.
Moreover, in the nature of things, an officer has no way of knowing or comparing his periodic performance evaluations with that of colleagues in his class functioning under different assignments, at different locations under different supervisors. The Selection Board considers evaluations over a period of years, thus minimizing these differences, but in the nature of things, all unevenness cannot be eliminated... Thus, an officer may not fully realize his actual circumstances until he receives his notice of selection out... nor can he always know with any certainty what adverse or negative aspects in his many evaluations will be singled out to support the unfavorable ranking decision....

...to be ranked for selection out is no light matter. It threatens an involuntary separation. It carries a stigma and, to use the words of Justice Frankfurter, causes a 'grievous loss' to the officer's professional standing....

...It is clear that an officer is entitled to more than a general conclusory form of notice—he must, in addition, be advised of the facts on which the Selection Board's notice is based and he must, before the hearing, have full access to all materials concerning him that were considered by that Board... He should be given opportunity to present favorable witnesses willing to appear in person or by affidavit. He must be allowed to interrogate adverse witnesses in person or by written interrogatories approved by the Selection Board. If he can retain counsel at his own expense, such counsel must be permitted to represent him at the review hearing. Experience will dictate methods for developing a fair hearing consistent with these rights without turning the process into an unduly formal adversary trial... The State Department has offered no adequate justification for denying any of these procedural safeguards....(emphasis added)23

The suit against the FAS program, AFGE v Rogers, was filed in the summer of 1971, and AFGE was immediately successful in winning a preliminary injunction against all conversions from the Civil Service to the Foreign Service Reserve in the foreign affairs agencies. The injunction held for nearly two years until Judge Howard Corcoran issued a decision on June 12, 1973 prohibiting direct conversion from the Civil Service to the tenured Foreign Service Reserve. Corcoran did grant authority to the agencies to continue with the FAS program under limited circumstances, which State and USIA proceeded to do.24 A second suit brought by AFGE, AFGE v Keogh, was ruled res judicata by Judge Gesell in 1975. In 1976, however, as a result of pressures from AFGE, AFSA and the Congress, management decisions in both State and USIA led to a reversal of the policy to staff U.S.-based positions under the FAS program. Negotiations between AFGE and USIA and AFSA and State are now underway to terminate the FAS program. The FAS suits together cost approximately $75,000.24

The Thomas Fund has been active in other cases as well. In a suit challenging Departmental alien spouse regulations, Correia v Kissinger, lengthy litigation produced substantial favorable changes in the regulations in December, 1976 just prior to the filing of final pleadings by the Fund. A case contesting the legality of mandatory Foreign Service retirement at age 60, Bradley v Kissinger, on both age discrimination and constitutional grounds is now pending and promises to have national consequences in the age discrimination field. Two cases challenging sex discrimination have been brought. The first, Palmer v Rogers, was resolved in favor
the plaintiff, Foreign Service Officer Alison Palmer. The second, a class action, Palmer v. Kissinger, is still pending. The Fund is involved in a second selection out case, Colm v. Kissinger, that is derivative from the 1973 Gesell decision in Lindsey v. Kissinger and raises fundamental questions regarding "property interest" in a Foreign Service career. A case involving the deprivation of over 300 State Department employees of Civil Service protections, Crowley v. Kissinger, is receiving partial Fund support. The Fund is also researching two cases involving the use of security files and national origin discrimination in the Voice of America.

While most cases have involved employee due process, AFGE has dealt with bread and butter issues too. A suit seeking Civil Service and Foreign Service retirement credits for approximately 150 former Binational Center employees, Taylor v. Hampton was ultimately successful in netting an average increase of $3,000 to $5,000 in retirement annuities per year for each retiree. An estimated aggregate of nearly 3 million dollars in future retirement income according to State Department estimates. Following the favorable court decision in the case, two compliance suits were necessary in 1976 before the Department and the Civil Service Commission began paying the additional annuities. The Fund, AFGE, and AFSA are also supporting an appeal, Hitchcock v. Commissioner, challenging Internal Revenue Service denial of the deductibility of Foreign Service home leave expenses, and Thomas Fund financing has been used to research and prepare draft legislation providing for the recovery of attorneys' fees in Foreign Service administrative proceedings.

Current Directions -- Collective Bargaining

The trend toward union representation in the Foreign Service in many ways parallels the unionization of other groups of professional workers in the United States. Teachers, lawyers, doctors, university professors, and scientists have discovered that collective bargaining is an effective way to improve conditions of employment and resolve work related disputes. As in other professions, however, collective bargaining was not the first step in union representation. Congress and the courts have each provided an alternative preliminary forum for the resolution of labor-management disputes in the Foreign Service.

But the alternatives have been expensive. A reasonable estimate of the combined costs to AFGE, the Thomas Legal Defense Fund, and individual employees for employment related litigation in the foreign affairs agencies since 1971 would be somewhere in the neighborhood of a quarter of a million dollars. The costs to the taxpayer for government legal fees is considerably higher since the government's costs have not been decreased by the occasional use of public interest attorneys and paralegal volunteers as has been the case with AFGE.

Nor has reliance on the Congress and the courts precluded initial steps toward collective bargaining in the foreign affairs agencies. The hearing procedures ordered by Judge Gesell require lengthy negotiations between AFGE and USIA and AFSA and the State Department on regulations governing the Special Review Panels that were established pursuant to the court order. Congress legislated grievance procedures but the regulations implementing the legislation were negotiated with AFGE and AFSA. Bargaining agreements between AFGE, AFSA, and the foreign affairs agencies have been reached on a variety of issues including promotion panel safeguards, travel allowances, performance evaluation procedures, and upward mobility for Foreign Service clerical employees.
These agreements have been ad hoc in view of the "rolling negotiations" concept embodied in Executive Order 11636. But USIA and AFGE have recently concluded an informal agreement, permitted by the Order, to engage in "package bargaining." AFGE will shortly be presenting to USIA management a comprehensive set of bargaining proposals which will cover most aspects of Foreign Service employment in the Agency and which will eventually be incorporated into a "package" agreement with a fixed duration clause.24

The question facing the foreign affairs agencies is not whether some form of collective bargaining system will take place, but what kind of system will it be and under what kinds of authorities will it exist. Executive Order 11636 has been increasingly criticized in recent months. Notably in 1975 the Commission on the Organization of the Government for the Conduct of Foreign Policy (the Murphy Commission) found:

From the point of view of effective personnel management, the compromise arrangement which led to E.O. 11636 has not in general worked well, and the future problems under the order will probably grow. What was intended originally as continuing consultation within the family of the Foreign Service is fast becoming a complex adversary, legalistic personnel governance system where the lines between management and the 'union' are hard to find ... The State Department was slow in organizing itself to handle employee-management relations. It has not yet developed the professional expertise and continuity required... The Board (of the Foreign Service) ...has proven particularly ill-suited to labor relations. Its members, particularly the majority of seven from the foreign affairs agencies have little experience in labor relations. 25

While AFGE agreed generally with the Murphy Commission's critique, it sharply disagreed with the Commission's proposed solutions which were to revoke Executive Order 11636, exempt Foreign Service Officers from the main provisions of Executive Order 11491, and provide for informal representation through professional associations only. 26

The alternative for AFGE is enactment of Federal service labor-management relations legislation to replace Executive Orders 11491 and 11636. At its National Convention in 1976, AFGE voted to seek collective bargaining legislation for both Civil Service and Foreign Service employees with due regard for the distinctive nature of employment conditions in the Foreign Service. Bills now pending in the Congress, notably H.R.13, incorporate many of the collective bargaining principles that have been developed under the NLRB and the executive order system, including the creation of an independent Federal Labor Relations Authority. The debate on alternatives will center in good part on this proposed legislation and its relevance to Foreign Service labor-management relations. 27

Union representation has benefited Foreign Service employees. The troubled history of Foreign Service personnel policies and practices demonstrates the inadequacies of a system based exclusively on models of "collegiality," "consultations," and "the Foreign Service family." A view that has been amply documented by the Congress and the courts. Employee morale, due process, and benefits are better served through a system of collective representation and third party dispute settlement
procedures based on the principle of enforceable management accountability.

That union representation has furthered the public interest seems evident as well. At a minimum, it would appear to be self-evident that the public interest is served when personnel practices are modified so as to comport with Constitutional guarantees of due process of law. But beyond that, there would seem to be a relationship between good foreign policy and a responsible personnel system. Creative foreign policy cannot be formulated nor advanced well by a servile staff. And American interests can be promoted best by professionals working under constitutional standards and decent conditions of employment.
FOOTNOTES


2. Ibid., pp. 9-10.

3. Ibid., pp. 2 and 4.


5. Almost all Foreign Service employees below the level of Deputy Assistant Secretary of State in Washington and below the level of Deputy Chief of Mission in the field are defined as being "employees" for "employee-management" purposes. Whether in an effort to avoid conflict of interest or to minimize the number of employees represented by unions, definitions of "supervisor" in the Civil Service are much broader than their counterparts in the Foreign Service.


8. Ibid., p. 67.

9. Ibid., p. 60.

10. Ibid., pp. 61-63.

11. Ibid., p. 60.

12. Ibid., p. 63.


16. In the Civil Service, career employees can only be removed for cause, can work until age 70, and can only be hired and assigned under government wide Civil Service regulations and standards.


19. A missing and highly favorable Inspector General's report was a key factor in the selection of Charles William Thomas, A Foreign Service Officer whose suicide in April, 1971 was widely publicized and contributed greatly to Congressional and employee organization efforts to achieve personnel reform. The missing report was subsequently found in the files of another officer with the name of Charles W. Thomas.

20. Foreign Service Grievance legislation was the primary objective in the Congress, but other initiatives were undertaken as well. Changes making the Foreign Service retirement system no less advantageous than the Civil Service were sought. And AFGE opposition was successful in blocking the confirmation of Foreign Service Personnel Director Howard Mace as Ambassador to Sierra Leone. Mace was subsequently assigned as Consul General to Istanbul, a post that did not require confirmation and where he is now serving under Ambassador William Macomber.

21. Other members of the Fund's Advisory Committee include E. Clinton Bamberger, then Dean of the Catholic University Law School; Senator Birch Bayh; Associate Supreme Court Justice (ret) Tom C. Clark; Walter E. Fauntroy, Member of Congress, District of Columbia; Monsignor George C. Higgins, U.S. Catholic Conference; Brother Cornelius Justin, F.S.C., Professor Emeritus of Labor Relations, Manhattan College; Richard J. Murphy, former Assistant Postmaster General; John J. Slocum, Foreign Service Information Officer (ret); Gene R. Preston, Foreign Service Officer; Bernard Wiesman, President, AFGE Local 1812 (ret); Mrs. Charles William Thomas, Foreign Service Reserve Officer; and Frank A. Chiancone, Foreign Service Information Officer.


24. The FAS program is a particularly good case in point. Imposed without union involvement or Congressional sanction in 1971, the program has come under increasing fire from AFGE and from groups such as AFSA, the Murphy Commission, the Stanton Panel, and the Congress. State Department/USIA intentions to abolish the FAS program, made in 1976, were expressed in a report to the Congress on January 10, 1977. Changes in the personnel systems in State and USIA, the report noted, "will be subject to ... consultation with authorized employee representatives prior to implementation." See U.S. Department of State, "Meeting Future Foreign Affairs Personnel Needs: Report to the Congress on Plans for Improving and Simplifying the Personnel Systems of the

26. Ibid. AFSA too in recent years has modified its enthusiastic endorsement of Executive Order 11636. A recent editorial in Foreign Service Journal was sharply critical of the procedures set up under the Order and particularly the lack of neutrality of the Board of the Foreign Service. See "The Board of the Foreign Service --No Impartiality," Foreign Service Journal, April, 1976, p.2.

27. The following resolution introduced by USIA AFGE Local 1812, was adopted by the AFGE National Convention. "Whereas, the separate and unique conditions of employment in the Foreign Service of the United States and the public interest create a distinct framework for the development and implementation of personnel policies and procedures, and; Whereas, historically management officials in the foreign affairs agencies have used the distinctive nature of Foreign Service employment to legitimate a system of personnel administration inferior in its application of justice, equity, and career protections to those systems that cover other Federal employees, and: Whereas, Executive Order 11636, "Employee-Management Relations in the Foreign Service of the U.S." has created a labor-management system devoid of even the minimum rights to a freely negotiated labor-management agreement, to neutral third party dispute settlement procedures, and to other protections that are available to Federal employees under Executive Order 11491; Now Therefore Be It Resolved, that AFGE seek legislation extending to the Foreign Service the statutory right of Federal employees to organize and bargain collectively through labor organizations of their own choosing."