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Date: June 29, 1971
AMERICAN EMBASSY
BRASILIA, BRAZIL

4595c

TO: RIO DE JANEIRO (POST) Precedence: _____

FOR: BOONSTRA (NAME OF PERSON) FROM: AMBASSADOR (NAME OF PERSON)

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Letter dated June 22 from Macomber very similar in substance to advance copy, main changes being as follows:

Para 3 add "I cannot predict, of course, whether a request of this magnitude would be approved."

Para 5, 6, 7, 8, revised as follows:

If a retiring employee with an immediate Civil Service annuity were to bring suit for severance pay, we think we would stand a good chance of winning the case in the Brazilian courts. We have done some research in this area, and find that the Brazilian courts have consistently take a broad view of sovereign immunity in declining to accept jurisdiction over foreign governments in labor cases. Although we have not always come out too well in the local labor courts, we have never lost a case in Brazil at the appellate level when sovereign immunity was available as a ground for our defense. We believe, therefore, that it will not be necessary or advisable to amend the Embassy's severance pay system to grant

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severance pay to those employees who will receive immediate Civil Service retirement annuities. ~~the message, thanks again~~

~~for~~ With respect to legal actions which might be brought by employees not wishing to move to Brasilia, we have no authority to make such payments as Brazilian law does not require them and the Brazilian Government itself is not making them. I can appreciate the problems this causes you, but I am afraid we have no latitude in this area.

You asked for information on similar severance pay problems elsewhere. Without going into a point-by-point comparison of all posts' severance pay plans, I can assure you that Embassy Brazil's country-wide plan is certainly one of the most generous. We have been threatened with law suits in Italy because the Embassy's plan does not follow the generous provisions of Italian law in all detail. As you suggest, however, we have generally regarded severance pay, where required by local law or custom, as a normal cost of doing business in a given country.

Our experts on local personnel problems discussed these matters in detail with Elmer Kryza while he was here, and

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they will continue to be in touch with the Embassy as we move further down the road on this. In the meantime, thanks again for the careful analysis you have given to this problem and for bringing it to our attention.

Kohn bringing copy of letter to Rio.

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