

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

**AMERICAN FOREIGN SERVICE ASSOCIATION
(Union)**

and

**UNITED STATES DEPARTMENT OF STATE
(Agency)**

FS-PS-0002

**DECISION ON REQUEST FOR GENERAL STATEMENT
OF POLICY OR GUIDANCE**

June 20, 2017

**Before the Board: Patrick Pizzella, Chairperson, and
Stephen R. Ledford and Herman J. Cohen, Members¹**

I. Statement of the Case

The Union has filed with the Foreign Service Labor Relations Board (the Board) a “request[for] . . . interpretation and guidance,”² which we interpret as a request for a general statement of policy or guidance under § 1427.2 of the Board’s Regulations.³ Specifically, the Union requests an interpretation of § 1018(b)(2) of the Foreign Service Act of 1980.⁴ That provision concerns the termination of payroll deductions for union dues. Despite the opportunity to offer its views on this question, the Agency did not file a response to the Union’s request.

¹ Member Ledford did not participate in this decision.

² Request at 4; *see also id.* at 1 (alternatively describing the request as seeking “Information and Guidance”).

³ 22 C.F.R. § 1427.2.

⁴ Pub. L. No. 96-465, § 1018(b)(2), 94 Stat. 2071, 2141-42 (1980) (codified as 22 U.S.C. § 4118(b)(2)).

After carefully considering standards for issuing general statements of policy or guidance under § 1427.5 of the Board’s Regulations,⁵ we grant the Union’s request and set forth our interpretation of § 1018(b)(2) below.

II. Background

When Agency employees wish to have their Union dues automatically withheld from their paychecks, the employees complete a form that authorizes the Agency to withhold those funds and remit them to the Union.⁶ According to the Union, the Agency automatically terminates dues withholding when a foreign-service employee retires. The Union asserts that this practice is based on an erroneous understanding of § 1018(b)(2) of the Foreign Service Act, which provides:

(b) Termination of assignment for deduction of dues

An assignment for deduction of dues shall terminate when—

....

(2) the individual ceases to receive a salary from the [Agency] as a member of the Service⁷

According to the Union, the Agency funds and manages a unique retirement system for foreign-service employees, and the same finance office that pays active-duty foreign-service employees also pays retirees their benefits. The Union asserts that the Agency continues to “pa[y]” retired foreign-service employees,⁸ and that, consequently, § 1018(b)(2) does not apply to their situation. In addition, the Union asserts that, because retired foreign-service employees may be voluntarily recalled to active duty and many are recalled, retirees remain ““member[s] of the Service,””⁹ within the meaning of § 1018(b)(2).

According to the Union, retirees are not excluded from the definition of a “bargaining unit” in § 1012 of the Foreign Service Act;¹⁰ the Union advocates on behalf of retired members;¹¹ and retired foreign-service employees may re-initiate dues withholding¹² if they complete a new dues-withholding-authorization form after

⁵ 22 C.F.R. § 1427.5.

⁶ See Standard Form No. 1187, “Request for Payroll Deductions for Labor Organization Dues,” http://www.afsa.org/sites/default/files/Portals/0/membership_payroll_deduction_form.pdf (last accessed Apr. 3, 2017).

⁷ Pub. L. No. 96-465, § 1018(b)(2), 94 Stat. 2071, 2141-42 (1980) (codified as 22 U.S.C. § 4118(b)(2)); see also Request at 2 (asserting that Agency’s practice “is based *solely*” on subsection (b)(2) (emphasis added)).

⁸ Request at 3.

⁹ *Id.* (quoting 22 U.S.C. § 4118(b)(2)).

¹⁰ *Id.* (citing Pub. L. No. 96-465, § 1012, 94 Stat. 2071, 2135 (1980) (codified as 22 U.S.C. § 4112)).

¹¹ *Id.*

¹² *Id.*

retirement.¹³ In conclusion, the Union argues that the automatic termination of dues withholding causes it to lose dues and, therefore, asks the Board to find that § 1018(b)(2) does not require automatic termination of dues withholding upon retirement.¹⁴

III. Analysis and Conclusion: We grant the Union’s request and find that § 1018(b)(2) requires the Agency to terminate an existing dues-withholding assignment when a retiring employee stops receiving a salary.

Because the resolution of this question will have general applicability under the Foreign Service Labor-Management Relations Statute¹⁵ – which is part of the Foreign Service Act – and will promote constructive and cooperative labor-management relationships in the Foreign Service,¹⁶ we grant the Union’s request.

The Union contends that the Agency should continue withholding dues from an individual’s retirement benefits based on the same dues-withholding-authorization form that applied to the individual’s salary while in active service.¹⁷ We disagree.

Section 1018(b)(2) of the Foreign Service Act requires the Agency to terminate an existing dues-withholding assignment when an “individual ceases to receive a *salary* from the [Agency].”¹⁸ As explained below, retirees generally receive “annuities,” not salaries, upon retirement.¹⁹

The Foreign Service Labor-Management Relations Statute does not specifically define “salary.” But a dictionary definition of “salary” is, in pertinent part, “[a]n agreed

¹³ See Standard Form No. 1187A, “Request for Annuitant Deductions for Labor Organization Dues,” http://www.afsa.org/sites/default/files/Portals/0/membership_annuity_deduction_form.pdf (last accessed Apr. 3, 2017).

¹⁴ Request at 1-2, 4.

¹⁵ 22 U.S.C. §§ 4101-4118.

¹⁶ See 22 C.F.R. § 1427.5 (standards governing issuance of general statements of policy or guidance); *id.* § 1427.5(c) (“[w]hether resolution of the question presented would have general applicability under the Foreign Service Labor-Management Relations Statute”); *id.* § 1427.5(f) (“[w]hether the issuance . . . of a general statement . . . would promote constructive and cooperative labor-management relationships in the Foreign Service and would otherwise promote the purposes of the Foreign Service Labor-Management Relations Statute”); *see also id.* § 1427.5(d) (“[w]hether the question currently confronts the parties in the context of a labor-management relationship”).

¹⁷ Request at 3.

¹⁸ 22 U.S.C. § 4118(b) (emphasis added).

¹⁹ See, e.g., 22 U.S.C. § 4046 (providing for the computation of annuities for retirees covered by the Foreign Service Retirement and Disability System, which is the older foreign-service-retirement system); *id.* § 4071d (providing for the computation of annuities for retirees covered by the Foreign Service Pension System, which is the newer foreign-service-retirement system).

compensation *for services*.²⁰ Further, other sections of the Foreign Service Act show that the Act employs “salary” in a manner consistent with this dictionary definition.²¹

To use an example from the Union’s request, the Act specifies that a retiree who is “recalled to duty in the Service . . . shall, while so serving, be entitled *in lieu of annuity to the full salary* of the class in which serving.”²² In other words, a retiree in these circumstances would have received an “annuity” before being recalled to active service.²³ But after being recalled, that same individual would receive a “salary” instead of an “annuity.”²⁴ Further, “[o]n the day following termination of the recall service, the former *annuity shall be resumed*.”²⁵ This statutory wording illustrates that “salary” and “annuity” differ because “salary” accompanies only active service, and “annuity” accompanies retirement.²⁶ Although the Union asserts that the “same finance office” that pays active-duty foreign-service employees also pays retirees their benefits,²⁷ that does not demonstrate that retirees receive *salaries*, rather than annuities.

The Union also asserts that it is inconsistent for the Agency to insist that § 1018(b)(2) requires the termination of dues withholding upon retirement when dues withholding is reinstated if a retiree completes a new authorization form.²⁸ We note that other provisions of law – outside the Foreign Service Labor-Management Relations Statute – permit the Agency to process requests for allotments and assignments from retirement annuities,²⁹ but those provisions do not permit the Agency to ignore the termination-of-assignment requirements in § 1018(b)(2). Consequently, the Union’s assertion does not demonstrate that the Agency may withhold dues from a retirement annuity based on the same dues-withholding-authorization form that applied to an individual’s salary during active service.

²⁰ *Salary*, Black’s Law Dictionary (10th ed. 2014) (emphasis added).

²¹ *E.g.*, 22 U.S.C. § 3963 (“The President shall establish a Foreign Service Schedule which shall consist of [nine] salary classes and which shall apply to members of the Service . . . for whom salary rates are not otherwise provided”); *id.* § 3964(a) (“The Secretary shall assign all Foreign Service officers and Foreign Service personnel . . . to appropriate salary classes in the Foreign Service Schedule.”); *id.* § 3966(a) (establishing within-class “salary increases” after the completion of fixed periods of active service); *id.* § 3969 (“The Secretary of State shall establish the salary rate for each consular agent.”).

²² *Id.* § 4063(a) (emphasis added).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* (emphasis added).

²⁶ *Id.*

²⁷ Request at 3.

²⁸ *Id.*

²⁹ *See* 22 U.S.C. § 4060(a)(1) (concerning retirees under the Foreign Service Retirement and Disability System, “[a]n individual entitled to an annuity . . . may make allotments or assignments of amounts from such annuity for such purposes as the Secretary of State in his or her sole discretion considers appropriate”); *id.* § 4071h(a) (regarding the Foreign Service Pension System, the “Secretary of State shall . . . perform the functions and exercise the authority vested in the Office of Personnel Management [(OPM)] . . . by [the U.S. Code, title 5,] chapter 84 and may issue regulations for such purposes”); 5 U.S.C. § 8465(b) (describing an OPM authority that the Secretary of State may exercise as to Foreign Service Pension System retirees, “[a]n individual entitled to an annuity . . . may make allotments or assignments of amounts from the annuity for such purposes as the [OPM] considers appropriate”).

In sum, when a foreign-service employee retires, that “individual ceases to receive a salary from the [Agency].”³⁰ Consequently, under § 1018(b)(2), the Agency must terminate the individual’s previous dues-withholding assignment.³¹

IV. Decision

We grant the Union’s request and find that § 1018(b)(2) requires the Agency to terminate an existing dues-withholding assignment when a retiring employee stops receiving a salary.

The preceding opinion regarding the applicability of relevant statutes with respect to the deduction of union dues on behalf of Foreign Service employees notwithstanding, the Board believes that the continued membership of these employees in the bargaining unit, into retirement, argues for a special transitional procedure that management should adopt. The Board *strongly* wishes management and the Union to jointly agree to this procedure.

The Department deducts union dues from salaries on the basis of a voluntary act by the Foreign Service employee. The employee has the right to revoke his/her decision at any time. Whenever an employee who has had his/her union dues deducted from salary arrives at the moment of retirement, it must be assumed that he/she continues to believe it had been in his/her interest to maintain both their membership in the union, and the automatic deduction of union dues.

At the time of retirement, the Foreign Service employee’s membership in the union continues without interruption. The Board believes, therefore, that management should facilitate the employee’s option to continue the automatic deduction of dues after the transition from active duty to retirement, if the employee so desires.

The Board recommends that during his/her transition from active duty to retirement, the Foreign Service employee who has had union dues automatically deducted from salary, be given the following notification from management, provided the union agrees.

“During your active duty service, union dues had been automatically deducted from your salary at your request. If you wish to continue automatic dues payments to your union as a retiree, you must authorize an allotment from your annuity. If you wish to authorize such an allotment, please sign the authorization statement below and return it to

³⁰ 22 U.S.C. § 4118(b)(2).

³¹ *Id.*