64 FLRA No. 210

NATIONAL ASSOCIATION
OF INDEPENDENT LABOR
LOCAL 7
(Union)

and

UNITED STATES
DEPARTMENT OF THE AIR FORCE
4TH FIGHTER WING
SEYMOUR JOHNSON AIR FORCE BASE,
NORTH CAROLINA
(Agency)

0-NG-3061

_____

DECISION AND ORDER
ON NEGOTIABILITY ISSUES

July 30, 2010

_____

Before the Authority: Carol Waller Pope, Chairman, and Thomas M. Beck and Ernest DuBester, Members

I. Statement of the Case

This matter is before the Authority on a negotiability appeal filed by the Union under § 7105(a)(2)(E) of the Federal Service Labor-Management Relations Statute (the Statute), and concerns the negotiability of four proposals[1] pertaining to the uniform that an Air Reserve Technician (ART) must wear when performing work while in civilian status. The Agency filed a statement of position (SOP), to which the Union filed a response.

For the reasons that follow, we find that Proposals 1a, 1b, and 5 are outside the duty to bargain, and that Proposal 6 is within the duty to bargain. Accordingly, we dismiss the petition with regard to Proposals 1a, 1b, and 5, and direct the Agency to bargain over Proposal 6.

II. Background

ARTs are dual status technicians who are federal civilian employees, but are also required as a condition of employment to maintain membership in a military reserve unit. SOP at 6. In response to an Agency decision to require ARTs to wear the military uniform while working in a civilian capacity, the Union put forth the proposals at issue here. Petition at 4.

III. The Union's Hearing Request

Under § 2424.31 of the Authority's Regulations, the Authority may order a hearing "[w]hen necessary to resolve disputed issues of material fact[.]" 5 C.F.R. § 2424.31. Here, the Union requests a hearing "to address and to clarify" the alleged differences between National Guard Technicians (NGTs) and ARTs, Petition at 8, and to resolve alleged contradictions between affidavits submitted by the parties. Response at 8. Our review of the parties' affidavits reveals disputed factual issues concerning: (1) whether ARTs are subject to an immediate call to active duty; and (2) whether ARTs perform training duties that are military in nature. *See* SOP, Attach. (Jacobs Declaration) at 2; Response, Attach. 7 (Fafoulas Declaration) at 2, 3. With regard to the first issue, as discussed further below, the issue of whether ARTs are subject to an immediate call to active duty is not a fact material to resolving the negotiability of the Union's proposals. With regard to the second issue, as also discussed below, the military nature of the ARTs' training duties is considered in the Authority's negotiability analysis. However, the Union's affidavit merely provides that the declarant is "not able to perform *certain* training duties that are uniquely military in nature[,]" such as chemical warfare training, while in civilian status; it does not dispute that other military training may be performed in civilian status. *See* Fafoulas Declaration at 3 (emphasis added). As such, the Union does not raise disputed issues of material fact necessitating a hearing, and we deny the Union's request.

1. Of the eight proposals originally raised by the Union in its petition for review, only Proposals 1a, 1b, 5, and 6 continue to be before the Authority for a determination of negotiability. *See* Response at 6.

IV. Proposals 1a,[2] 1b,[3] and 5

A. Wording

1. Proposal 1a

> Section 2. All bargaining unit employees (BUE's) that work in Industrial/Maintenance/Flight Line areas of the Base will wear a Civilian Uniform provided by the Employer.

Petition at 5.

2. Proposal 1b

> Section 2. ART[s] will wear a Civilian Uniform provided by the Employer when performing civilian duties.

Id.

3. Proposal 5

> Section 7. The Civilian Uniform will consist of the following items:
>
> 4 long sleeve shirts
> 4 pants
> 4 tee shirts
> 1 jacket
> 1 winter jacket
> 1 summer coveralls
> 1 winter coveralls
> 1 winter hat
> 1 belt

Id. at 7-8.

B. Meaning

The parties agree that Proposal 1a would require all BUEs that work in the three areas identified in the proposal, including ARTs, to wear a civilian uniform to be provided by the Agency when performing civilian duties. Record of Post-Petition Conference (Record) at 2. Proposal 1b would require only ARTs in the three work areas identified in Proposal 1a to wear a civilian uniform provided by the Agency when performing civilian duties. *Id.* at 2-3. Finally, the parties agree that Proposal 5 describes the items that the civilian uniform referenced in Proposals 1a and 1b would comprise. *Id.* at 4.

C. Positions of the Parties

1. Agency

The Agency contends that Proposal 1a, 1b, and 5 are bargainable only at the election of the Agency as a method and means of performing work under § 7106(b)(1) of the Statute.[4] SOP at 1. The Agency asserts that it requires ARTs to wear the military uniform "to foster military discipline, promote uniformity, encourage *esprit de corps*, increase the readiness of the military forces for deployment, and enhance identification of the ARTs as a military organization because of the unique positions ARTs hold within the Air Force." *Id.* at 6. The Agency asserts that "[t]he role ARTs play as civilian employees in the full-time management of a Reserve unit is directly correlated to their obligations as members of the military establishment." *Id.* at 7. In this regard, the Agency contends that the "primary role of an ART is to train other reservists[,]" and that ARTs' "planning, scheduling, and conduct of training" are military responsibilities that are vital to the "combat-ready posture" of their units. *Id.* at 6, 7. According to the Agency, ARTs are subject to an immediate call to active duty in the event that their unit is mobilized. *Id.* at 7. For these reasons, the Agency argues, "ARTs' unique role makes the wear of the military uniform indispensable as a constant reminder they are members of an inherently military organization which is subject to mobilization at a moment's notice." *Id.* at 7 (citing *Ass'n of Civilian Technicians, Wis. Chapter*, 26 FLRA 682, 686 (1987) (*ACT*)).

2. In its petition, the Union set forth three alternative versions of Proposal 1. *See* Petition at 5-6, 8. For clarity, the Authority and the parties refer to these proposals as Proposal 1a, Proposal 1b, and Proposal 1c. *See* Record of Post-Petition Conference (Record) at 2 n.4.

3. The Union conceded at the post-petition conference that Proposals 1b and 1c were not set forth in its request for a written allegation of nonnegotiability, but were presented for the first time in the petition. Record at 2-3. The Union has since withdrawn Proposal 1c. Response at 6. The Agency has asserted that Proposal 1b is outside the duty to bargain, and has not raised an objection to the Authority determining the negotiability of Proposal 1b. Record at 3; SOP at 3-9. Thus, we address the negotiability of Proposal 1b here.

4. Section 7106(b)(1) of the Statute provides, in pertinent part, that "[n]othing . . . shall preclude any agency and any labor organization from negotiating . . . at the election of the agency, . . . on the technology, methods, and means of performing work[.]" 5 U.S.C. § 7106(b)(1).

Additionally, the Agency argues that the proposals are not appropriate arrangements under § 7106(b)(3) of the Statute because the composition of military uniforms is not negotiable and "any proposals which would allow employees to deviate from the prescribed components of the military uniform . . . 'excessively interfere'" with the Agency's right to require the wearing of "'a prescribed military uniform[.]'" SOP at 5 (quoting *ACT*, 26 FLRA at 686-87). In this regard, the Agency contends that "proposals giving . . . civilian technicians the option of wearing standardized civilian attire rather than the military uniform" are not appropriate arrangements because the "military nature of the uniform" is essential to achieving the purpose of the uniform requirement, as discussed above. SOP at 8.

2. Union

The Union argues that the proposals are appropriate arrangements under § 7106(b)(3) of the Statute. Petition at 5, 8; Response at 6-8. In this regard, the Union asserts that requiring ARTs to wear the military uniform while performing civilian duties "will adversely affect morale and could result in ART retention problems" because wearing the military uniform "requires conformance to military customs, such as saluting, standing at attention and grooming standards." Response at 4-5, 7. According to the Union, a civilian uniform "would also alleviate the grade compatibility/inversion issue" of having ARTs wearing military uniforms while supervising ARTs who outrank them. *Id.* at 4, 7. The Union further asserts that the proposal would not decrease the readiness of the military forces for deployment because ARTs are "not subject to immediate call to active duty at a moment[']s notice[,]" but often have several weeks -- and never less than 72 hours -- of notice prior to activation. *Id.* at 7. The Union acknowledges previous Authority decisions finding proposals that modify or alter the uniform requirement for NGTs to be nonnegotiable, but argues that these decision are distinguishable because: (1) ARTs are hired under Title 5 whereas NGTs are hired under Title 32 of the United States Code; (2) NGTs -- unlike ARTs -- are required by law to wear the uniform; (3) NGTs must hold equivalent grades in civilian and military status whereas ARTs in civilian supervisory positions may supervise ARTs with a higher military rank; and (4) ARTs -- unlike NGTs -- work with other civilian unit employees.[5] Response at 4.

D. Analysis and Conclusions

1. Proposals 1a, 1b, and 5 concern the methods and means of performing work within the meaning of § 7106(b)(1) of the Statute.

There are two prongs to the Authority's test used to determine whether a proposal concerns the methods or means of performing work. First, the proposal must concern a "method" or "means" as defined by the Authority. *See, e.g., Gen. Servs. Admin.*, 54 FLRA 1582, 1589 (1998). In this regard, the Authority construes the term "method" to refer to "the way in which an agency performs its work" and the term "means" to refer to "any instrumentality, including an agent, tool, device, measure, plan, or policy used by an agency for the accomplishment or furtherance of the performance of its work." *Id.* at 1589-90 (citations and footnote omitted). Second, it must be shown that: (1) there is a direct and integral relationship between the particular methods or means the agency has chosen and the accomplishment of the agency's mission; and (2) the proposal would directly interfere with the mission-related purpose for which the method or means was adopted. *Id.* at 1590 (citing *Ass'n of Civilian Technicians, Ariz. Army Chapter 61*, 48 FLRA 412, 420 (1993)).

The Authority has consistently held that the requirement that civilian military technicians wear a prescribed military uniform constitutes management's determination of the methods and means of performing work within the meaning of § 7106(b)(1) of the Statute. *AFGE, Local 1501*,

5. In addition, the Union argues that there is no "compelling need" for the requirement that ARTs wear the military uniform while performing civilian duties. Response at 3. However, the Agency's position that the proposals are not negotiable is not based on the Agency regulation requiring ARTs to wear the military uniform while performing civilian duties. SOP at 1. Thus, there is no basis for addressing the Union's compelling-need argument, and we do not address it further. Further, we note the Union's argument that requiring ARTs to wear the military uniform while in a civilian status is "illegal" because 10 U.S.C. § 772 "does not authorize the wear of the military uniform by ART[s] when not on active duty." Response at 2. This argument does not involve the legality of Proposals 1a, 1b, and 5, and therefore, does not involve a dispute regarding the negotiability of these proposals. *See* 5 C.F.R. § 2424.2(c) ("Negotiability dispute means a disagreement between an exclusive representative and an agency concerning the legality of a proposal or provision.") Rather, the Union's argument constitutes an allegation that the Agency's uniform requirement is unlawful. Such an allegation is not appropriately presented to the Authority in the context of a negotiability proceeding. *See Marine Eng'rs' Beneficial Ass'n, Dist. No. 1- PCD*, 60 FLRA 828, 832 (2005).

64 FLRA 802, 803 (2010) (*Local 1501*); *AFGE, Local 1869*, 63 FLRA 598, 599 (2009) (*Local 1869*); *NFFE, Local 1655*, 35 FLRA 740, 743 (1990); *AFGE, Local 3006*, 32 FLRA 539, 541 (1988) (*Local 3006*); *ACT*, 26 FLRA at 686. Moreover, where, as here, an agency imposes this requirement in order "to foster military discipline, promote uniformity, encourage *esprit de corps*, increase the readiness of the military forces for early deployment and enhance identification of the [agency] as a military organization[,]" the Authority has held that "the type of uniform, i.e., a military uniform, is critical to achieving the purpose for which the [a]gency has adopted the uniform requirement." *NAGE, SEIU, AFL-CIO*, 23 FLRA 730, 732 (1986) (*NAGE*). *See also Local 1501*, 64 FLRA at 804; *Div. of Military & Naval Affairs, State of N.Y., Albany, N.Y.*, 15 FLRA 288, 292-94 (1984), *aff'd sub nom. N.Y. Council, Ass'n of Civilian Technicians v. FLRA*, 757 F.2d 502 (2d Cir. 1985) (*Albany*) (citing judicial determinations of the "interrelationship between the duties performed by technicians and the ability of the National Guard to maintain its combat readiness" and testimony that "'technicians function in a more military fashion if they wear the military uniform'" (quoting *Bruton v. Schnipke*, 370 F. Supp. 1157, 1163 (E.D. Mich. 1974))). Thus, where a proposal would modify ARTs' military uniform requirement to impose a "civilian uniform" in order to "alleviate . . . rank issues[,]" the Authority has found that the proposal affected management's right to determine the methods and means of performing work. *Local 1869*, 63 FLRA at 598-99. In addition, the Authority has held that "[n]onmilitary . . . modifications of the required uniform are incompatible with the purpose of maintaining the military identity of civilian technicians which is necessary to the accomplishment of their mission." *Local 3006*, 32 FLRA at 543. *See also Local 1501*, 64 FLRA at 804.

The Union has not provided the Authority with a basis for distinguishing the foregoing precedent. Thus, we find that the Agency has established a direct and integral relationship between the accomplishment of its mission and its use of the military uniform. *See Local 1501*, 64 FLRA at 804; *Local 1869*, 63 FLRA at 599; *NAGE*, 23 FLRA at 732. As Proposals 1a, 1b, and 5 would impose a civilian uniform requirement, we find that the Union's proposal affects the Agency's exercise of its right to determine the methods and means of performing work within the meaning of § 7106(b)(1) of the Statute.

2. Proposals 1a, 1b, and 5 are not appropriate arrangements within the meaning of § 7106(b)(3) of the Statute.

In determining whether a proposal is an appropriate arrangement within the meaning of § 7106(b)(3) of the Statute, the Authority applies the analysis set forth in *NAGE, Local R14-87*, 21 FLRA 24 (1986). Under that analysis, the Authority first determines whether the proposal is intended to be an arrangement for employees adversely affected by the exercise of a management right. *Id.* at 31. If the Authority finds the proposal to be an arrangement, then the Authority will determine whether it is appropriate or whether it is inappropriate because it excessively interferes with management's rights. *Id.* at 31-33. In doing so, the Authority weighs the benefits afforded to employees under the arrangement against the intrusion on the exercise of management's rights. *Id.*

Even assuming that the Union's proposals constitute arrangements, for the following reasons, we find that they do not constitute appropriate arrangements because they excessively interfere with management's right to determine the methods and means of performing work.

With respect to the benefits that the proposals would afford employees, the Union argues that the proposals would eliminate certain negative effects that flow from the uniform requirement. In this connection, the Union argues that requiring ARTs to wear the military uniform while performing civilian duties "will adversely affect ART morale" because wearing the uniform "requires conformance to military customs, such as saluting, standing at attention and grooming standards." Response at 7. The Union also argues that substituting a civilian uniform for a military uniform would "alleviate the grade compatibility/inversion issue" of having ARTs in military uniform supervising ARTs who outrank them. *Id.* at 4, 7. However, the proposals would not change the fact that ARTs in civilian supervisory positions may supervise ARTs with a higher military rank. That they must do so *while wearing a military uniform* appears to be a relatively minimal adverse effect, and the benefits provided by the proposal would be fairly minimal.

In regard to Proposal 1a, which would require that both ARTs and civilian BUEs wear the civilian uniform, the Union additionally asserts that the proposal would "provide fairness and equity" by alleviating the "disparity" of requiring only ARTs to wear a uniform. *Id.* at 7. Even assuming that there is an inequity in requiring ARTs to work in military

uniform alongside civilian BUEs who are not in uniform, the Union has not demonstrated that it is anything other than a minor one.

With respect to the degree of intrusion on the exercise of management's rights, as discussed previously, the Agency requires ARTs to wear the military uniform "to foster military discipline, promote uniformity, encourage *esprit de corps*, increase the readiness of the military forces for deployment, and enhance identification of the ARTs as a military organization because of the unique positions ARTs hold within the Air Force." SOP at 6. In *Local 1501*, the Air Force articulated an identical purpose for its military uniform requirement for ARTs, and the Authority held that a proposal that would "effectively convert[] the military uniform into a civilian uniform" excessively interfered with management's right to determine the methods and means of performing work and, thus, was not an appropriate arrangement. 64 FLRA at 805-06.

In *Local 1501* and decisions involving the National Guard, the Authority found that proposals comparable to those at issue significantly intrude on management's right to use the military uniform as a "constant reminder" to dual-status technicians that their work is essentially military with implications for the combat readiness of their units. 64 FLRA at 805; *ACT*, 26 FLRA at 686. *See also Albany*, 15 FLRA at 294. In this connection, the Authority has stated:

> [B]ecause the traditional means of instilling *esprit de corps* and military discipline are not available for use with personnel who are employed in a civilian status, the wearing of the military uniform is indispens[a]ble as a constant reminder to technicians that they are members of an organization which is essentially military[.]

ACT, 26 FLRA at 686 (citing *Albany*, 15 FLRA at 294). The Union attempts to distinguish the National Guard decisions by stating that -- unlike the ARTs -- NGTs do not work among civilian BUEs, and NGTs must hold equivalent grades in civilian and military status whereas an ART in civilian status may supervise an ART with a higher military rank.[6] Response at 4. Although these distinctions may mean that the proposals' benefits would be greater for ARTs than for NGTs, they do not change the fact that only the military uniform can serve as a "constant reminder" to ARTs that they "are members of an inherently military organization[,]" SOP at 7, and, thus, the proposal would seriously undermine the purposes for which the Agency determined that the uniform requirement was necessary. *See ACT*, 26 FLRA at 686; *Local 3006*, 32 FLRA at 543. Moreover, to the extent the Union identifies adverse effects unique to ARTs flowing from the exercise of management's right to determine the methods and means of performing work, as discussed above, they appear to be relatively minor adverse effects.

In addition, the Union argues that the uniform requirement would not decrease the readiness of the military forces for deployment because ARTs are "not subject to immediate call to active duty at a moments notice[,]" but often have several weeks -- and never less than 72 hours -- of notice prior to activation. Response at 7. However, the Authority has considered and rejected a similar argument where, as here, the ARTs train other reservists and "[m]aintaining combat-ready posture depends directly on [ARTs'] ability to perform this aspect of the job." *See* SOP at 6-7; *Local 1501*, 64 FLRA at 805-06. Thus, because the Agency requires ARTs to wear the military uniform as a "constant reminder they are members of an inherently military organization" so that they will conduct training while keeping in mind that their training duties "are vital to their units' military readiness[,]" SOP at 7, "the uniform requirement's role in increasing the readiness of the military forces for deployment is not limited to the ability of an individual ART to quickly deploy in the proper uniform." *Local 1501*, 64 FLRA at 805. *See also Albany*, 15 FLRA at 292-93.

Balancing the parties' respective interests, we find that the intrusion of Proposals 1a, 1b, and 5 on management's right to determine methods and means outweighs the benefits that the proposals would afford employees. Accordingly, we find that Proposals 1a, 1b, and 5 excessively interfere with the right to determine methods and means and, thus, are not appropriate arrangements within the meaning of § 7106(b)(3) of the Statute.

For the foregoing reasons, we find that Proposals 1a, 1b, and 5 are outside the duty to bargain.

6. The Union attempts to further distinguish the Authority's National Guard decisions by noting that NGTs are hired pursuant to a different title of the U.S. Code and are required by law to wear the military uniform. Response at 4. Because Authority decisions on this issue do not rely upon these distinctions, we reject these arguments.

V. Proposal 6

A. Wording

Section 8. The Employer will provide cleaning services for the uniform.

Petition at 8.

B. Meaning

The parties agree that Proposal 6 applies to all BUEs who are required to wear a uniform in the performance of their civilian duties and requires the Agency to provide cleaning services for these uniforms. Record at 4.

C. Positions of the Parties

1. Agency

The Agency asserts that because uniform allowances for civilian employees in the Department of Defense (DOD) are "specifically provided for" by 10 U.S.C. § 1593[7] (Section 1593) and 5 U.S.C. § 5901[8] (uniform statute), Proposal 6 is outside the duty to bargain because it does not concern a condition of employment under § 7103(a)(14)(C) of the Statute (subsection C).[9] SOP at 12-14 (citing *NAGE, Locals R12-122, R12-222*, 38 FLRA 295, 305-06 (1990) (*Locals R12*); *ACT*, 26 FLRA at 683). According to the Agency, the Authority has held that the uniform statute "deal[s] comprehensively with the payment of a uniform allowance[,]" and "therefore a proposal stating the employer will provide laundering services of all required military clothing items" is "specifically covered by federal statute[.]" SOP at 13.

Alternatively, the Agency argues that Proposal 6 is inconsistent with Section 1593 and the uniform statute because it requires the Agency to "not only pay a uniform allowance but also to furnish uniforms in the form of cleaning services to those employees who also receive a uniform allowance." *Id.* at 14. In this regard, the Agency argues that Proposal 6 conflicts with the Authority's holding that requiring an agency to provide both uniforms and uniform allowances is inconsistent with the uniform statute. *Id.* (citing *AFGE, Council 214*, 30 FLRA 1025, 1034 (1988) (*Council 214*), *petition for review denied sub nom. AFGE, Council 214 v. FLRA*, 865 F.2d 1329 (D.C. Cir. 1988)).

2. Union

The Union argues that "no statute . . . prohibits an [e]mployer from providing cleaning services for uniforms." Petition at 8.

D. Analysis and Conclusions

1. Proposal 6 is not specifically provided for by Federal statute for purposes of § 7103(a)(14)(C) of the Statute.

Subsection C excludes from the definition of "conditions of employment," and thus, from the duty to bargain, matters that are "specifically provided for by Federal statute[.]" 5 U.S.C. § 7103(a)(14). Mere reference to a matter in a statute is not sufficient to exclude it from the definition of conditions of employment under subsection C. *IAMAW, Franklin Lodge No. 2135, & Int'l Plate Printers, Die Stampers & Engravers Union of No. Am., Locals Nos. 2, 24, & 32, & Graphic Commc'ns Int'l Union, Local No. 285, & Int'l Ass'n of Siderographers, Wash. Ass'n,*

7. 10 U.S.C. § 1593 provides, in pertinent part:

> (a) Allowance Authorized.
> (1) The Secretary of Defense may pay an allowance to each civilian employee of the [DOD] who is required by law or regulation to wear a prescribed uniform in the performance of official duties.
> (2) In lieu of providing an allowance under paragraph (1), the Secretary may provide a uniform to a civilian employee referred to in such paragraph.
> . . . .
> (b) . . . [T]he amount of an allowance paid, and the cost of uniforms provided, under subsection (a) to a civilian employee may not exceed $400 per year . . . .
>
> (d) . . . Amounts appropriated annually to the [DOD] for the pay of civilian employees may be used for uniforms, or for allowance for uniforms, as authorized by this section and section 5901 of title 5.

8. 5 U.S.C. § 5901 provides, in pertinent part:

> (a) There is authorized to be appropriated annually to each agency of the Government of the United States, . . . such sums as may be necessary to carry out this subchapter. The head of the agency concerned, out of funds made available by the appropriation, shall--
> (1) furnish to each of these employees a uniform at a cost not to exceed $400 a year . . . ; or
> (2) pay to each of these employees an allowance for a uniform not to exceed $400 a year[.]

9. Section 7103(a)(14) excludes from the definition of "conditions of employment" any "policies, practices, and matters . . . to the extent [they] are specifically provided for by Federal statute[.]" 5 U.S.C. § 7103(a)(14).

50 FLRA 677, 681 (1995) (*IAMAW*), *enforced sub nom. U.S. Dep't of the Treasury, Bureau of Engraving & Printing v. FLRA*, 88 F.3d 1279 (D.C. Cir. 1996). A matter is specifically provided for within the meaning of subsection C only to the extent that the governing statute leaves *no* discretion to an agency. *Id.* at 682. Insofar as an agency has discretion, even if that discretion is less than total, the discretion is subject to being exercised through negotiation. *Id.*

The Agency cites *ACT* and *Locals R12* to support its argument that the uniform statute "deal[s] comprehensively" with uniform allowances and, thus, proposals concerning the "upkeep" of uniforms pertain to a matter that is specifically provided for by Federal statute. SOP at 13 (citing *ACT*, 26 FLRA at 683; *Locals R-12*, 38 FLRA at 305-06). However, in *NFFE, Local 1669*, 55 FLRA 63 (1999), the Authority stated that, to the extent previous decisions such as *ACT* "suggest that the comprehensive nature of [the uniform statute], by itself, forecloses any bargaining on the subject of uniform allowances, they are superseded . . . and will not be followed." *Id.* at 67. Rather, the Authority stated that it will "explicitly analyz[e] whether the governing statute leaves any discretion to the agency[,]" and, if an agency has any discretion, then that discretion is subject to being exercised through negotiation, and the matter is not specifically provided for by Federal statute. *IAMAW*, 50 FLRA at 682, 685.

Both of the statutory provisions at issue here authorize agencies to either provide employees with uniforms, or pay them uniform allowances. The statutes also state that the cost of each uniform provided, or allowance paid, is not to exceed a stated maximum. *See* 5 U.S.C. § 5901; 10 U.S.C. § 1593. Other than its citation to *ACT* and *Locals R12*, the Agency does not explain how Section 1593 and the uniform statute "specifically provide[] for" the provision of uniform laundering services by agencies. *See* SOP at 13 (citing *ACT*, 26 FLRA at 683; *Locals R-12*, 38 FLRA at 305-06). Although these statutes set limitations on the amount of funds expended per employee on a uniform or uniform allowance, the Agency does not assert that Proposal 6 would require the Agency to exceed these statutory maximums. In any event, the Authority has held that where, as here, the proposal does not prescribe a particular amount to be expended, "[t]he [uniform statute's] maximum allows the parties considerable latitude for bargaining and . . . it would best effectuate the Statute to permit them to explore possibilities for agreement within the statutory maximum." *Council 214*, 30 FLRA at 1034. In sum, the Agency has not established that Section 1593 and the uniform statute "leave[] *no* discretion to the Agency" to bargain over the provision of cleaning services for uniforms. *See IAMAW*, 50 FLRA at 682 (emphasis added). Thus, we find that Proposal 6 does not pertain to a matter that is specifically provided for by Federal statute within the meaning of subsection C.

2. Proposal 6 is not inconsistent with law.

Section 1593 authorizes certain agencies to pay a uniform allowance to each civilian employee of DOD who is required to wear a uniform or, "*[i]n lieu of* providing an allowance[,]" to provide a uniform. 10 U.S.C. § 1593(a)(1)-(2) (emphasis added). Similarly, the uniform statute states that an agency using appropriated funds shall "furnish to each . . . employee[] a uniform . . . *or* . . . pay to each . . . employee[] an allowance for a uniform[.]" 5 U.S.C. § 5901(a) (emphasis added). Thus, under both statutes, an agency using appropriated funds may not provide an employee *both* a uniform and a uniform allowance. Consistent with this wording, the Authority has held that a proposal that an agency pay employees a uniform allowance *in addition to* providing a uniform was outside the duty to bargain. *Council 214*, 30 FLRA at 1036.

Here, the proposal merely states that the Agency "will provide cleaning services for the uniform." Petition at 8. Neither *Council 214*, nor the statutory provisions cited by the Agency, establishes that providing uniform cleaning services is the equivalent of providing a uniform. In this regard, Proposal 6 does not implicate the statutory prohibition against an employee receiving the dual benefit of both a uniform and a uniform allowance, notwithstanding the Agency's argument that the proposal requires it to "provid[e] . . . uniforms in the form of cleaning services." SOP at 14. Moreover, as discussed above, the Agency does not argue that providing uniform cleaning services in addition to providing each employee with either a uniform or a uniform allowance would cost more than the applicable statutory maximums. Accordingly, we find that Proposal 6 is not inconsistent with law.

For the foregoing reasons, we find that Proposal 6 is within the duty to bargain.

VI. Order

We dismiss the petition with regard to Proposals 1a, 1b, and 5. Proposals 1a, 1b, and 5 are bargainable only at the election of the Agency. The Agency shall, upon request, or as otherwise agreed to by the parties, negotiate concerning Proposal 6.