OFFICE OF COMPLIANCE
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Plumbers Local 5, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Petitioner, and Office of the Architect of the Capitol, Employing Office	)	Case No. 01-LMR-01

Before the Board of Directors; Susan S. Robfogel, Chair; Barbara L. Camens; Alan V. Friedman; Roberta L. Holzwarth; Barbara Childs Wallace, Members.

DECISION OF THE BOARD OF DIRECTORS

I. Statement of the Case

This case concerns the negotiability of a proposal to provide premium pay for holiday work and is before the Board pursuant to §7105(a)(2)(E) of the Federal Service Labor Management Relations Statute ("FSLMRS"), 5 U.S.C. §7105(a)(2)(E), as applied by §220(c)(1) of the Congressional Accountability Act ("CAA"), 2 U.S.C. §1351(c)(1).

The petitioner Plumbers Local 5, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada ("Plumbers Local 5" or "Union") is the certified representative of a unit of journeyman plumbers employed in the Construction Management Division of the Office of the

Architect of the Capitol ("Employing Office" or "AOC"). These employees are employed on an hourly "as-needed" basis for various construction projects undertaken by the Employing Office. The parties are negotiating for an initial collective bargaining agreement that will cover terms and conditions of employment, including pay.

The Union has submitted a proposal that would require that covered employees who work on holidays, as designated by the Architect of the Capitol, be paid at one and one-half times their wage rate payable under the bargaining agreement. For those employees who work on Christmas Day and New Year's Day, the pay would be two times their wage rate payable under the bargaining agreement. The Employing Office contends that this proposal is nonnegotiable. Contrary to the Employing Office, we conclude that the proposal is a negotiable subject over which the Employing Office is required to bargain with the Union.

II. Proposal In Dispute

"Section 2. All hours worked on holidays, as designated by the Architect of the Capitol, shall be paid at one and one-half (1½) times the employee's wage rate otherwise payable under this Agreement.

"Section 3. All hours worked on Christmas Day and New Year's Day shall be paid at two (2) times the employee's wage rate otherwise payable under this Agreement."

III. Initial Positions of the Parties

A. Employing Office

The Employing Office advances several grounds for claiming that it is not required to bargain over this proposal. First, it maintains that the premium pay proposal is inconsistent with Federal law in two respects and hence is nonnegotiable under

§7117(a) of the FSLMRS, 5 U.S.C. §7117(a), as applied by §220(c)(1) of the CAA, 2 U.S.C. §1351(c)(1). The Employing Office argues that the plumbers are paid at prevailing wage rates established pursuant to the Davis-Bacon Act, 40 U.S.C. §276a et seq., and that such "prevailing wage rate" employees are not entitled to holiday pay by virtue of the definitional exclusion in the premium pay statute that allows certain Federal employees to earn a wage premium for working on Sundays and holidays. See 5 U.S.C. §5541(2)(C)(xi).[1] The Employing Office argues that payment of a holiday premium to the plumbers would be "inconsistent" with this exclusion.

A second "inconsistency" would be created, according to the AOC, by 31 U.S.C. §3101(a), were it to agree to expend appropriated funds for holiday premium pay. Under this section, "appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." The Employing Office theorizes that the exclusion of prevailing wage employees under 5 U.S.C. §5541(a)(2)(C)(xi) removes holiday premium pay as a lawful object for which the Employing Office would be allow to spend appropriated money.

As an alternative prong of attack, the AOC insists that because the pay for the plumbers here is established through the prevailing wage rate determinations by the Department of Labor under the Davis-Bacon Act,[2] the Employing Office is left with no discretion or control in the setting of such compensation. According to AOC, under case law interpreting FSLMRS, matters beyond the control and discretion of an employing agency are outside the duty to bargain.

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[1] The exclusion, in the form of a definition for purposes of the subchapter on premium pay, reads in pertinent part: "'employee' . . . does not include . . . an employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of this title [5 U.S.C. §§5341-49] . . . ."

B. Union

Plumbers Local 5 disputes each of the contentions of the Employing Office.

1. The Davis-Bacon Act does not constrain discretion of AOC to negotiate holiday premium pay.

Without challenging whether the Davis-Bacon Act is directly applicable to the unit employees here, the Union asserts that the Employing Office misinterprets the basic thrust of what that Act requires. The Union asserts that Davis-Bacon does not lock in a prevailing wage rate above which a covered construction employer cannot pay, as the AOC maintains. Davis-Bacon wage determinations by the Labor Department, says the Union, establish only the *minimum* wages for construction work on federally funded projects. The Davis-Bacon Act therefore does not preclude contractors from paying wages that exceed the prevailing rate.

2. The proposal is not inconsistent with statutory law governing premium pay.

The Union argues that the holiday premium pay proposal is not inconsistent with the definitional exclusion in 5 U.S.C. §5541(2)(C)(xi). The exclusion of prevailing wage employees from the premium pay statute should not be construed as a blanket prohibition against the payment of holiday pay to such employees. Rather, the effect of the statutory exclusion is to leave this subject within the realm of "conditions of employment" not established by Federal law (5 U.S.C. §7103(14)) and therefore is a matter over which a covered employer is required to bargain. See, e.g., *AFGE, AFL-CIO, Local 1897, and Department of the Air Force, Eglin Air Force Base* (*"Eglin AFB"*), 24 FLRA 377 (1986).

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[2] See 40 U.S.C. §276a.

The Union adds that the Employing Office's argument based on a statutory exclusion is at odds with its willingness to negotiate over employment termination standards notwithstanding the fact that bargaining unit employees are also excluded from the definition of "employee" for purposes of the statutory provision governing certain adverse personnel actions including removal. See 5 U.S.C. §§7511-7514. Finally, the Union cites a decision of the Comptroller General as authority for the proposition that an agency may provide prevailing wage rate employees with holiday premium pay.[3]

3. The proposal is not inconsistent with the statutory limitation that appropriations may only be expended for an authorized purpose.

The Union stresses that Congress' appropriations to the Architect of Capitol for wages is couched as a lump sum amount for salaries.[4] There is no breakdown as to specific authorizations for pay for regular hours, overtime hours, holiday hours, or travel expense reimbursements. Thus, given the general nature of the appropriations for compensation, payment for holiday premium work creates no inconsistency in the sense that it falls outside a purpose "for which an appropriations were made." 31 U.S.C. §1301(a).

IV. Supplemental positions of the parties

Following review of the initial submissions, the Board requested that the parties file supplemental briefs addressing the relevance of *U.S. Department of Treasury, Bureau of Engraving and Printing, and International Association of Machinists, Lodge 2135*

[3] 25 Comp. Gen. 584 (1946). In light of the reasons which the Board finds as supportive of negotiability, there is no need to rely upon this decision.

[4] The Union cites as an example the appropriations for the Architect of the Capitol for fiscal year 2001, in the Consolidated Appropriations Act, 2001, P.L. 106-554, 114 Stat. 2763A-108, *printed in,*146 CONG.

("*BEP*").[5] Although neither party had cited *BEP*, the Board believes that the decision is germane to the resolution of the negotiability question. In that case, the Federal Labor Relations Authority (FLRA) sustained a negotiability appeal involving the duty to bargain under 5 U.S.C. §7117 within the context of the prevailing wage requirements under 5 U.S.C. §5349(a).[6] The latter statutory provision is significant to the instant case since it applies to recognized trade or craft employees (such as the plumbers here) who are employed by certain specifically named Federal employers including the Bureau of Engraving and Printing and Office of the Architect of the Capitol. Pursuant to §5349(a), their pay "shall be fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates." The FLRA held that this statutory language vested the Bureau with a degree of discretion to ascertain the "prevailing rates" of comparable jobs and make adjustments in "consistent with the public interest."

Because there is nothing in the statute to suggest that this discretion is to be exercised solely or exclusively by the Bureau, the FLRA concluded that it would not be inconsistent with law to require bargaining over union proposals concerning the methodology by which the "prevailing rates" are ascertained. In view of the fact that AOC is subject to this same pay-fixing provision as the Bureau, together with the same bargaining obligation under 5 U.S.C. §7117 as applied by the CAA, the question is obviously presented whether the FLRA's interpretation should inform our decision here.

REC. H12222 (daily ed. Dec. 15, 2000)(H. Rept. 106-1033)(Petitioner's Exh. E, in June 12, 2001 Reply Statement).

[5] 50 FLRA 677 (1995), *enf'd*, 88 F.3d 1279 (DC Cir. 1996)(Table), 1996 WL 311465 (unpublished opinion).

[6] This section is part of the Prevailing Rate Systems Act, P.L. 92-392, 86 Stat. 564 (codified in 5 U.S.C. §§5341-49), which Congress enacted in 1972. For further discussion of this law, see text accompanying note 9, *infra*.

A. Employing Office

AOC largely dismisses *BEP*, contending that the decision is distinguishable because it involved "different facts, issue and controlling provisions of law."

AOC claims that the affected employees in *BEP* were not paid on the basis of the Davis-Bacon Act, 40 U.S.C. §276a. AOC further argues that the issue addressed in Bureau is not presented here. In *BEP*, the question was whether the pay proposal there was subject to the negotiability exclusion under 5 U.S.C. §7103(a)(14)(C), which excludes from bargainable "conditions of employment" matters "to the extent [they] are specifically provided for by Federal statute." Here, the issue is whether the premium pay proposals are inconsistent with other provisions of law, more specifically 5 U.S.C. §5541(2)(C)(xi). Thus, in AOC's view, because the issues and controlling provisions of law in *BEP* are different from those here, the FLRA decision is, for the most part, irrelevant.

If *BEP* has any bearing at all, claims the AOC, it is to recognize that an agency's discretion to adjust prevailing wage rates cannot be exercised in such a way to frustrate a congressional scheme. Here, argues the AOC, the definitional exclusion of 5 U.S.C. §5541(2)(C)(xi) is evidence of congressional intent to deny premium holiday pay to the plumbers and 5 U.S.C. §5349 addresses only the basic rate of pay payable to prevailing rate employees.

B. Union

The Union, on the other hand, believes that *BEP* not only undermines the Employing Office's arguments but also reinforces its own contention that its holiday premium pay proposal is negotiable. The decision, in the Union's view, dispels the

notion that the wage determinations of the Department of Labor under the Davis-Bacon Act have handcuffed the pay-fixing authority of AOC. Rather, the *BEP* decision confirms the authority of the Architect of the Capitol, under a plain reading of 5 U.S.C. §5349(a), to fix and adjust the pay of employees such as the plumbers "consistent with the public interest in accordance with the prevailing rates . . . as the pay-fixing authority of each agency may determine." That statutory authority grants sufficiently broad discretion to the Architect so that under FLRA precedent the Employing Office is required to bargain over the exercise of that discretion.

Thus, while it may be appropriate for the parties to agree that Davis-Bacon wage determinations may be relied upon to establish the basic rates of pay, those determinations do not end the matter. Further negotiations over the subject of holiday premium pay are warranted because it is in accord with the availability of such pay to plumbers in the private sector and the Executive branch of the Federal government and because it would be "consistent with the public interest" as interpreted by *BEP*.

V. Analysis and Conclusions

A. The holiday premium pay proposal is negotiable under the contours established by the applicable statutory provisions of the FSLMRS and 5 U.S.C. §5349 of the Prevailing Rate Systems Act governing the Office of the Architect of the Capitol.

We think that the AOC has misapprehended the statutory foundations of its obligation to bargain over the wages, including premium pay, of the unit employees here. Contrary to the AOC's assertions, none of the statutory bases on which it relies – the Davis-Bacon Act, the definitional exclusion in 5 U.S.C. §5541(2)(C)(xi), or the

appropriations limitation in 31 U.S.C. §1301 – presents an obstacle to its obligation to bargain over the Union's holiday premium pay proposal.

Whether or not the Union's holiday premium pay proposal is negotiable hinges upon the interplay between the AOC's general bargaining obligation under the FSLMRS, as applied by the CAA, and its specific obligation under the Prevailing Rate Systems Act. 5 U.S.C. §5349. Under the FSLMRS, as applied by the CAA, the Employing Office is under a duty to negotiate in good faith with the representative chosen by covered employees. 5 U.S.C. §7114(a)(4). The scope of the bargaining obligation is defined in 5 U.S.C. §7102, which confers upon such covered employees the right through their representative "to engage in collective bargaining with respect to conditions of employment." In turn, "conditions of employment" are defined in 5 U.S.C. §7103(a)(14)(A)-(C) to mean in relevant part "personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions" with exceptions made for matters that are "specifically provided for by Federal statute" and for matters relating to certain political activities or the classification of a job position.[7] Also excepted from the bargaining obligation are matters that concern conditions of employment, but are inconsistent with law or regulation (hereinafter referred to as the "inconsistent with law" exception). 5 U.S.C. §7117(a). See *Patent Office Professional Association and U.S. Dept. of Commerce, Patent and Trademark Office,* 53 FLRA 625, 647-50 (1997). These exceptions to the duty to bargain reflect the fact that in

[7] In its Supplemental Brief, the AOC claims that §7103 is not applicable. It is true that §7103 is not expressly mentioned in §220 of the CAA, which makes the rights, protections, and responsibilities established under various specified sections of the FSLMRS applicable to the legislative branch. However, AOC's assertion is simply wrong. Being a definitional section, §7103 is made applicable by virtue of §225(f)(1) of the CAA, 2 U.S.C. §1361, which states that "[e]xcept where inconsistent with definitions and

establishing a collective bargaining regime for the benefit of the Federal workforce, Congress did not want bargaining to displace or disturb a law or regulation that either substantively determines a condition of employment or establishes an exclusive process for fixing a condition of employment. Thus, the task of evaluating the negotiability of a bargaining proposal must begin with a determination whether the proposal involves a condition of employment, followed by the analysis whether a specific law or regulation has effectively taken the subject "off the table."

Pay is a quintessential condition of employment that is subject to bargaining under the FSLMRS, as the Supreme Court has so affirmed in *Fort Stewart Schools v. FLRA*, 495 U.S. 641 (1990). However, a pay proposal will be found nonnegotiable if it falls within one of the above statutory exceptions, which is often found to be the case because the subject of pay and benefits is so widely settled by federal law.[8] If a pay proposal involves a matter for which a governing statute leaves *no* discretion to an employing agency, the matter is deemed "specifically provided for by Federal statute" and therefore is excepted from bargaining. *BEP*, 50 FLRA at 682. Similarly, if a governing statute vests an employing agency with *sole* and *exclusive* discretion over a matter, a proposal that subjects the exercise of that discretion to collective bargaining would be "inconsistent with law." *AFGE, Local 3295, and Dept. of Treasury, Office of Thrift Supervision*, 47 FLRA 884, 894 (1993). Where a proposal implicates a pay-specific statute or regulation, a careful examination of the structure, purpose and operation of the statute or regulation in question is typically required.

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exemptions provided in [the CAA], the *definitions* and exemptions in the laws made applicable by [the CAA] shall apply under [the CAA]" (emphasis added).

[8] See *Eglin AFB*, 24 FLRA at 378.

In the instant case, the relevant pay-specific statute is the Prevailing Rate Systems Act (PRSA).[9] Congress enacted this law in order to revise and codify the compensation system for tradesmen and skilled craftsmen who work for the Federal government but whose positions are not part of the General Schedule of classified positions, 5 U.S.C. §§ 5102(c)(7), 5104, and whose pay is not fixed pursuant to the General Schedule pay rates. 5 U.S.C. §5332. A fundamental objective was to assure that such employees are paid at "prevailing rates" so as to maintain "reasonable parity between public and private employees and to protect blue collar workers' salaries from mere administrative whim and convenience." *National Maritime Union of America v. United States*, 682 F.2d 944, 954 (Ct. Cl. 1982). To that end, the PRSA contains detailed provisions for calculating and adjusting the prevailing rates of pay for these blue collar workers, mostly employed in the Executive branch, and commits to the Office of Personnel Management the responsibility of administration. Generally the calculation is made through a survey mechanism that examines the wages paid to comparable jobs in a particular geographic locale.

With respect to the Office of the Architect of the Capitol and other specific agencies of the Legislative and Judicial branches (as well as the Bureau of Engraving and Printing), Congress adopted a modified approach. Because such agencies had preexisting practices for paying their trades and skilled craft workers at prevailing rates, which practices Congress desired not to disturb, it authorized their continuation without mandating that these agencies be subject to the detailed provisions of the PRSA dealing

[9] 5 U.S.C. §5341 et seq.

with, among other things, pay-fixing procedures, retroactive pay, and job grading and retention.

The applicable section, 5 USC 5349, thus only requires these agencies to fix and adjust pay "from time to time as nearly as is consistent with the public interest in accordance with prevailing rates and in accordance with the such [other] provisions of the [PRSA] . . . as the pay-fixing authority of each such agency may determine." Three elements are identifiable in this provision. The prevailing rate element aims to pay covered employees wages that are comparable with fellow craft or trades workers in the private sector. The "public interest" element, which is not specifically defined in the statute, serves as a counterbalance to this objective, justifying wage rates below the prevailing rates if warranted, for example, by fiscal considerations (such as the imposition of a temporary wage cap).[10] Finally, the agencies covered under §5349 are given the discretion to apply the other sections of the PRSA.[11]

The FLRA's decision in *BEP* carefully examined the implications of 5 U.S.C. §5349 on the Bureau of Engraving and Printing's duty to bargain over a pay proposal concerning the methodology for determining prevailing rates for steel and die craft workers. As noted above, the Authority, drawing upon judicial interpretation, held that this statute vested the covered employing offices with broad discretion: These agencies could decide the process by which the prevailing rates were ascertained and then could make adjustments "consistent with the public interest." Furthermore, the Authority found nothing in this statutory formulation suggesting that the exercise of discretion

[10] See *Henderson v. United States*, 17 Cl.Ct. 180, 182-183 (1989) and cases cited therein.
[11] Neither party has specifically addressed the relevance of this third element. Therefore, we have no occasion to address its implications except to note that it does not appear on its face to create a bar to bargaining over holiday premium pay.

under these two elements was committed solely and exclusively to the employing office; hence it would not be "inconsistent with law" under the FSLMRS to subject the exercise of that manifold discretion to collective bargaining.

The Plumbers Local 5 argues that the AOC would be acting well within the range of its discretion to pay a holiday premium wage to its unit employees. The Union alleges that the parties did agree in negotiations to utilize the wage determinations of the Department of Labor under the Davis-Bacon Act to calculate the *basic* rate of pay of unit employees. Adding a holiday premium pay component, it urges, would be "consistent with the public interest" and "in accordance with the prevailing rates" embodied in the practice of private employers, as well as other governmental agencies, to pay a holiday premium.[12]

AOC does acknowledge the relevance of 5 U.S.C. §5349 in its Supplemental Brief but insists that it does no more than address *basic* rates of pay payable to prevailing rate employees. The implication is that because the section does not authorize holiday premium pay, the AOC is without power to agree to such pay.

We do not agree with this implication. The term "pay" in §5349 is not modified by any qualifying adjective that would limit it to basic pay.[13] Moreover, in issuing substantive regulations under a related section of the PRSA covering most other

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[12] The Union cites, as an example of the governmental practice, the regulation of the Office of Personnel Management providing a premium pay rate (double the basic pay) for prevailing rate employees of the Executive branch who are entitled to holiday premium pay. 5 C.F.R. §532.507(a) (2001), promulgated under 5 U.S.C. § 5343, of the PRSA. It further cites, as an example from the private sector, a provision from a contract which Local 5 has with a local contractor that sets holiday pay at double the base rate of pay. (Reply Brief, Exh. F).

[13] See *Lanehart v. Horner*, 818 F.2d 1574, 1581 (Fed. Cir. 1987)("Congress has used more limited terms, rather than the generic term 'pay,' when it intended to refer to specific types of pay."). Compare 5 U.S.C. §5343(f), which is part of the PRSA and declares night differential pay rates as "part of *basic* pay" (emphasis added). See also 5 U.S.C. §276a(b)(1) of the Davis-Bacon Act which defined "wages" and its variations to include "basic hourly rate of pay."

prevailing wage employees, 5 U.S.C. §5343, the Office of Personnel Management has interpreted the concept of pay for purposes of prevailing wage employees to encompass holiday premium pay. 5 C.F.R. §532.507. Given the use of similar terms in comparable sections of the PRSA, it is appropriate to interpret the term "pay" in §5349 to include holiday premium pay. See *Gustafson v. Alloyd Co.*, 513 U.S. 561, 570 (1995).

AOC's attempt to limit the thrust of *BEP* is likewise unpersuasive. Although the exact proposal in *BEP* involved the methodology for surveying prevailing rates, whereas the proposal here would both add the holiday premium to the compensation package and fix the premium rate, the *BEP* opinion clearly confirms the broad discretion of AOC to fix pay under the elements articulated in §5349. Thus, the exercise of that discretion may be committed to the collective bargaining process. The AOC has not demonstrated how negotiations with the Union over holiday premium pay would run afoul of these elements. It has not shown that the parties are precluded from considering the prevalence of the holiday premium pay rate in the relevant geographic locale. Nor has it been shown such negotiations would foreclose consideration of the "public interest" element of the statutory equation.[14]

In sum, we conclude that the Union's pay proposal involves a bargainable condition of employment within the contours established by 5 U.S.C. §5349. As we explain next, the various grounds upon which the AOC attempts to invoke the "inconsistent with law" exception to negotiability under 5 U.S.C. §7117 are without merit.

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[14] See *NTEU Chapter 83 and Dept. of Treasury*, 35 FLRA 398, 414-16 (1990)(finding of negotiability does not mean that union secures its proposal in a contract or that it must be implemented; agency may, in keeping with what it conceives to be in its best interests, still reject or seek to modify proposal during ensuing bargaining as long as it continues to negotiate in good faith).

B. While the Davis-Bacon Act may serve as a basis on which the prevailing rate of basic pay is initially calculated, it does not limit the authority and discretion of the AOC under the FSLMRS and under 5 USC §5349(a) to negotiate holiday premium pay.

The AOC's argument that the holiday premium pay proposal is inconsistent with the Davis-Bacon Act is flawed in several respects. First, the Davis-Bacon Act does not directly apply to the Employing Office, as AOC seems to imply. The Act only covers private contractors and subcontractors who contract (for over $2,000) with the Federal government to perform construction, alterations, or repair of public buildings or public works. 40 U.S.C. §276a. It may be true that the AOC is engaged in construction work that is similar to the work performed by private contractors who are subject to Davis-Bacon. However, the mere performance of construction work without more is insufficient to make AOC subject to the Davis-Bacon Act. Furthermore, the AOC points to no other federal statute which would mandate that it adhere to the wage determinations made by the Department of Labor under Davis-Bacon.

To be sure, AOC may decide that its duty to pay prevailing wages under 5 U.S.C. §5349 can be appropriately satisfied by use of the wage determinations made by the Department of Labor under the Davis-Bacon Act. And the Union has indicated that the parties in fact have agreed to abide by the Labor Department's determination of the basic rate of pay for plumbers in the relevant locale. This fact, in itself, buttresses our conclusion that the AOC does negotiate over wage rates. Still, AOC seems to be arguing that by agreeing to abide by Davis-Bacon wage determinations of the Labor Department, it is somehow foreclosed from negotiating other components of pay independent of Davis-Bacon. This is erroneous. The parties remain free, for example, to single out the issue of holiday premium pay and negotiate over it within the parameters established by 5

U.S.C. §5349(a). In short, Davis-Bacon is not a straitjacket the precludes any bargaining over holiday premium pay.

C. The definitional exclusion in 5 U.S.C. §5541(2)(C)(xi) is not a prohibition on prevailing wage employees receiving holiday pay and therefore creates no inconsistency with law.

The Employing Office contends that affording prevailing rate employees holiday premium pay would be inconsistent with the provisions of law governing premium pay for the federal workforce. 5 U.S.C. §§5541-50a ("Subchapter V"). Specifically, AOC cites the definitional exclusion of prevailing rate employees from Subchapter V, 5 U.S.C. §§5541(2)(C)(xi), as indicative of congressional intent to deny premium pay to such workers. However, AOC has pointed to no authoritative interpretation sustaining that view. As the Union correctly maintains, the definitional exclusion is not a prohibition but may be simply interpreted as a legislative decision generally not to subject prevailing rate employees to the particular statutory rules of Subchapter V. The effect of this exclusion is to leave the matter open for negotiation within the parameters discussed in the prior section on 5 U.S.C. §5349(a). Cf. *NAGE, Local R5-82 and Dept. of Navy, Navy Exchange*, 43 FLRA 25, 44-45 (1991). In short, the Employing Office has simply turned the significance of the exclusion on its head.

D. The limitation contained in 31 U.S.C. §3101 that appropriated funds may only be used for purposes for which they were appropriated does not restrict payments for holiday premium pay.

The AOC interposes 31 U.S.C. §3101 as an alternative basis for holding the holiday premium pay proposal inconsistent with law; expending funds to cover holiday premium pay would supposedly be for a purpose not authorized by appropriations made

to the Office of the Architect of the Capitol. However, this argument necessarily assumes the correctness of its above contention that holiday premium pay for prevailing rate employees is not lawfully permitted by virtue of the definitional exclusion in 5 U.S.C. §5541(2)(C)(xi). Because we have concluded that this assumption is erroneous, we likewise cannot sustain AOC's argument based on 31 U.S.C. §3101. As the Union has pointed out, the limitation in §3101 should pose no obstacle to the negotiability of the proposal here, since the relevant appropriations legislation funding the AOC's operations has authorized spending for matters falling within the broadly worded purpose of "Salaries and Expenses."[15] Premium pay unquestionably comes within that purpose.

V. Order

The Employing Office shall, upon request, or as otherwise agreed to by the parties, bargain on the proposal concerning holiday premium pay.[16]

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[15] See note 4 *supra* and accompanying text.
[16] In finding the proposal to be negotiable, we make no judgment as to its merits.