

## ATTACHMENT 1N

### EXAMPLES OF DOCUMENTS THAT SATISFY PRE-HEARING DISCLOSURE REQUIREMENT SET FORTH AT SECTION 2423.23

Different types of violations plead that are reflected in the examples that follow:

1. Unilateral change in conditions of employment established by past practice.
2. Impact and implementation bargaining.
3. Refusal to furnish information under section 7114(b)(4).
4. Repudiation of bargaining agreement.
5. Formal discussions; bypass; and section 7102 rights.
6. Weingarten rights.
7. Discrimination based on exercise of protected activity.
8. Duty of fair representation.

Note : Complete examples are presented for the first 2 types of violations. Only the theory of the case and relief sought are presented for violations 3 through 8. In each pre-hearing disclosure document, the introductory paragraphs for the “Proposed Witness List” and “Index of Proposed Documents to be Offered into Evidence” are the same as the examples.

**1. UNILATERAL CHANGE IN CONDITIONS OF EMPLOYMENT ESTABLISHED  
BY PAST PRACTICE.**

CASE CAPTION

**Pre-hearing Disclosure**

Pursuant to section 2423.23 of the Authority’s Regulations, and the ALJ’s pre-hearing order dated \_\_\_\_\_, counsel for the General Counsel submits the following: (a) A list of witnesses with a brief synopsis of their expected testimony; (b) Copies of documents, with an index, proposed to be offered into evidence; and (c) A brief statement of the theory of the case including the relief sought.

**(a) PROPOSED WITNESS LIST**

Counsel for the General Counsel submits the following proposed witness list for the hearing scheduled in the captioned case in (city, State) on (date). The undersigned counsel states that as of this date, s/he intends to call each witness listed. However, counsel reserves the right to call, and will promptly notify respondent’s counsel of such decision, such additional witnesses as are necessary to present testimony concerning documents provided by respondent pursuant to subpoena. In addition, after Respondent’s case has been presented, counsel reserves the right to call such additional witnesses who are not on this list as are necessary in order to present rebuttal testimony. Next to each witness’ name is a synopsis of the testimony to be presented.

WITNESS

SYNOPSIS OF TESTIMONY

1. Officer Joe Sparks

Mr. Sparks will testify that between 1990 and 1995 that, without objection, detention officers were permitted to park their privately-owned vehicles in Lot 40. He will also testify regarding the change in the agency’s past practice concerning parking privileges.

2. Officer Jane Jones                      Ms. Jones will testify that since she became a detention officer in 1991, she has parked her privately-owned vehicle in Lot 40. She will also state that her supervisor observed her parking in this lot and approved of this practice.
  
3. Officer John Jakes                      Mr. Jakes will testify that when he became a detention officer in 1992, his supervisor gave him permission to park in Lot 40 and that when his current supervisor began work in 1993 she confirmed that he still had permission to park in Lot 40.
  
4. Union President Jim Sole              The Union President will testify that 1 week after unit employees notified him of the change in the agency's past practice concerning parking privileges, he met with the Deputy District Director who stated that the agency refused to bargain concerning the revocation of the detention officers' parking privileges. He will also state that 2 days later he met with District Director, who refused to bargain, stating that the employees were not entitled to parking, and therefore there was no duty to bargain.

**(b) INDEX OF PROPOSED DOCUMENTS TO BE OFFERED INTO EVIDENCE**

The following is an Index of the proposed documents that Counsel for the General Counsel states, as of this date, will be offered into evidence. However, Counsel for the General Counsel reserves the right to submit additional documents that will be/have been provided pursuant to a subpoena. Additionally, after Respondent's case has been presented, Counsel for the General Counsel reserves the right to present additional documentary evidence on rebuttal.

1. Report prepared by Deputy District Director, dated August 9, 1995, entitled "Status of Parking at the District Office."
  
2. Letter from District Director to all employees dated September 5, 1995, entitled "Termination of Privately-owned Vehicle Parking Privileges in Lot 40."

**(c) THEORY OF THE CASE AND RELIEF SOUGHT**

1. THEORY OF THE CASE:

Respondent violated section 7116(a)(1) and (5) of the Statute on September 5, 1990, when it refused to give the Union adequate notice and bargain, upon request, in good faith, to the extent required under the Statute, prior to the implementation of a change in its practice of providing parking for detention officers' privately-owned vehicles.

2. RELIEF SOUGHT:<sup>2</sup>

Counsel for the General Counsel will seek an order requiring Respondent to:

a. Cease and desist from:

Changing policies governing parking privileges without first affording the employees' exclusive collective bargaining representative notice and an opportunity to bargain concerning any proposed change in such policy.

Refusing to bargain with the Union concerning any change in policies governing employees' parking privileges.

In any like or related manner, interfering with, restraining or coercing bargaining unit employees in the exercise of their rights assured under the Statute.

b. Rescind the changes in the parking policy that became effective on September 10, 1995, and return to the preceding policy that had been in effect.

c. Notify, and upon request, bargain with the Union concerning any proposed change in the policy concerning employees' parking privileges.

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\*Counsel for the General Counsel reserves the right to amend the relief requested, and will promptly notify respondent's counsel of such decision, based upon a review of the documents provided by respondent pursuant to subpoena.

- d. Post a notice to all employees containing the contents of the order.

The notice is to be posted at \_\_\_\_\_, and signed by \_\_\_\_\_.

## 2. IMPACT AND IMPLEMENTATION BARGAINING.

### CASE CAPTION

#### Pre-hearing Disclosure

Pursuant to section 2423.23 of the Authority's Regulations, and the ALJ's pre-hearing order dated \_\_\_\_\_, counsel for the General Counsel submits the following: (a) A list of witnesses with a brief synopsis of their expected testimony; (b) Copies of documents, with an index, proposed to be offered into evidence; and (c) A brief statement of the theory of the case including the relief sought.

#### (a) PROPOSED WITNESS LIST

Counsel for the General Counsel submits the following proposed witness list for the hearing scheduled in the captioned case in (city, State) on (date). The undersigned counsel states that as of this date, s/he intends to call each witness listed. However, counsel reserves the right to call, and will promptly notify respondent's counsel of such decision, such additional witnesses as are necessary to present testimony concerning documents provided by respondent pursuant to subpoena. In addition, after Respondent's case has been presented, counsel reserves the right to call such additional witnesses who are not on this list as are necessary in order to present rebuttal testimony. Next to each witness' name is a synopsis of the testimony to be presented.

#### WITNESS

#### SYNOPSIS OF TESTIMONY

1. James Pole

Mr. Pole will testify that on July 28, 1996, he began a 6-month detail from his assigned duty station in

Pueblo, Colorado, to San Diego, California, where he functioned as a training instructor. He will testify about the specifics of the detail, e.g., how he received the notice, what his job responsibilities were, and who completed his performance appraisal.

2. June Fleet

Ms. Fleet will testify about her work as a claims representative at the agency's Pueblo, Colorado location before and after the time when Mr. Pole was on detail, e.g., additional work assignments occasioned by Mr. Pole's detail.

3. Jack Campbell

Mr. Campbell was a member of the Union's negotiating team in 1988 who will testify that when a particular Letter of Understanding (LOU) was agreed to, the parties agreed that the LOU would not foreclose further bargaining on all reassignments and details except for the sole waiver expressed in the LOU.

**(b) INDEX OF PROPOSED DOCUMENTS TO BE OFFERED INTO EVIDENCE**

The following is an Index of the proposed documents that Counsel for the General Counsel states, as of this date, will be offered into evidence. However, Counsel for the General Counsel reserves the right to submit additional documents that will be/ have been provided pursuant to a subpoena. Additionally, after Respondent's case has been presented, Counsel for the General Counsel reserves the right to present additional documentary evidence on rebuttal.

1. Letter of detail to James Pole dated July 14, 1996.
2. The parties' collective bargaining agreement, in effect since January 1990, which includes an appendix and numerous letters of understanding that were exchanged during the 1988 national negotiations over the collective bargaining agreement.

**(c) THEORY OF THE CASE AND RELIEF SOUGHT**

1. THEORY OF THE CASE:

Respondent violated section 7116(a)(1) and (5) by its failure to notify the Union and provide it with an opportunity to negotiate on the impact and implementation regarding the detail of unit employee Pole before such detail was implemented on July 28, 1996.

2. RELIEF SOUGHT:\*

Counsel for the General Counsel will seek an order requiring Respondent to:

a. Cease and desist from:

Changing working conditions of unit employees by detailing unit employees for more than 30 days without first notifying the exclusive bargaining representative, and affording it the opportunity to bargain regarding the procedures to be observed in implementing the change and the appropriate arrangements for those employees who have been, or may be, adversely affected by the implementation of any such change.

b. Upon request, bargain with the Union concerning the impact and implementation of the detail of Mr. Pole which occurred in July 1996 and apply retroactively the terms of any agreement which may result.

c. Notify the Union of proposed detail of a unit employee for more than 30 days, and upon request, negotiate with the Union as to the procedures to be observed in implementing such details and appropriate arrangements for employees adversely affected by such detail.

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\*Counsel for the General Counsel reserves the right to amend the relief requested, and will promptly notify respondent's counsel of such decision, based upon a review of the documents provided by respondent pursuant to subpoena.

- d. Post a notice to all employees containing the contents of the order. The notice is to be posted at \_\_\_\_\_, and signed by \_\_\_\_\_.

### 3. REFUSAL TO FURNISH INFORMATION UNDER SECTION 7114(b)(4).

(a) and (b) omitted

#### (c) THEORY OF THE CASE AND RELIEF SOUGHT

##### 1. THEORY OF THE CASE:

Respondent violated section 7116(a)(1), (5) and (8) of the Statute by refusing to furnish the Union with certain sanitized information concerning disciplinary actions. This information is normally maintained by the agency in the regular course of business and is reasonably available and necessary for the Union to fulfill its statutory responsibilities

##### 2. RELIEF SOUGHT (particular to information requests):\*

Counsel for the General Counsel will seek an order requiring Respondent to :

- a. Cease and desist from:
  - Failing and refusing to furnish sanitized copies of all proposal letters, decision letters, letters of reprimand, oral admonishments confirmed in writing, counseling memos, and closed without action or clearance letters issued to bargaining unit and non-bargaining unit employees in the Southern Region during the period July 1, 1995, through June 30, 1997, in which the reason for the proposal was an alleged violation of Agency Rule of Conduct, section 214, which information was requested by the Union.

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\*Counsel for the General Counsel reserves the right to amend the relief requested, and will promptly notify respondent's counsel of such decision, based upon a review of the documents provided by respondent pursuant to subpoena.

- Failing to furnish information requested by the Union under the Statute in a timely manner.
- b. Furnish to the Union (insert from above).
- c. Respond in a timely manner to requests for information made by the Union under the Statute.
- d. Posting (see prior 1<sup>st</sup> 2 examples).



*In certain situations, the Trial Attorney, after discussion with the RA, may request a non-traditional remedy to ensure that the respondent makes timely and proper responses to information requests. See U.S. Immigration and Naturalization Service, Border Patrol, Tucson, Arizona, ALJD 97-41 (July 16, 1997) (Authority adopted, without precedential significance, ALJ's decision and order which, in relevant part, set forth at p. 12 how the respondent will reply to the Union's future requests for information to ensure that such replies will be made in a timely and proper manner).*

#### **4. REPUDIATION OF BARGAINING AGREEMENT.**

**(a) and (b) omitted**

**(c) THEORY OF THE CASE AND RELIEF SOUGHT**

1. THEORY OF THE CASE:

Respondent violated section 7116(a)(1), (5) of the Statute by (1) failing to bargain in good faith with the Union when it unilaterally changed its smoking policy before bargaining had been completed; and (2) repudiating the smoking agreement executed at the level of exclusive recognition when it failed to maintain indoor smoking facilities until negotiations with the Union concerning the provision of outdoor smoking facilities had been completed.

2. RELIEF SOUGHT (particular to repudiation):
  - a. Cease and desist from:
    - Failing and refusing to bargain in good faith with the Union concerning its smoking facilities.
    - Failing and refusing to maintain indoor smoking facilities until local bargaining on the agency's policy has been completed.
  - b. Rescind its ban on all smoking indoors and at entrances to its facilities, which became effective on (date).
  - c. Reopen, restore, and maintain all indoor smoking facilities that existed on its facilities at the agency before (date).
  - d. Notify the Union of any proposed action concerning indoor smoking facilities and, upon request, bargain in good faith concerning such proposed action; maintain indoor smoking facilities until negotiations with respect to outdoor facilities have been completed.
  - e. Posting (see 1<sup>st</sup> 2 examples).

## 5. FORMAL DISCUSSION; BYPASS; AND SECTION 7102 RIGHTS.

(a) and (b) omitted

### (c) THEORY OF THE CASE AND RELIEF SOUGHT

#### 1. THEORY OF THE CASE:

Respondent violated (1) section 7116(a)(1) and (8) of the Statute by holding a formal discussion with a bargaining unit employee

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\*Counsel for the General Counsel reserves the right to amend the relief requested, and will promptly notify respondent's counsel of such decision, based upon a review of the documents provided by respondent pursuant to subpoena.

concerning a potential grievance without affording the Union notice and an opportunity to be represented at the discussion as required by section 7114(a)(2)(A) of the Statute; (2) section 7116(a)(1) and (5) because it bypassed the Union by meeting directly with a bargaining unit employee on a potential grievance; and (3) section 7116(a)(1) because the bypass demeaned the Union and interfered with employees' rights under section 7102 of the Statute to designate any rely on the Union for representation.

2. RELIEF SOUGHT (particular to formal discussions and bypass):\*

Counsel for the General Counsel will seek an order requiring Respondent to:

a. Cease and desist from:

- Conducting formal discussions with any bargaining unit employee concerning any grievance or any personnel policy or practices or other general condition of employment without first notifying the Union and affording it the opportunity to be represented at such formal discussions.
- Failing or refusing to bargain in good faith with the Union by bypassing the Union and communicating directly with a bargaining unit employee concerning a grievance.
- Interfering with the right of its employees to designate and rely on the Union to process their grievances through the negotiated grievance procedure.
- In any like, or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under the Statute.

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\*Counsel for the General Counsel reserves the right to amend the relief requested, and will promptly notify respondent's counsel of such decision, based upon a review of the documents provided by respondent pursuant to subpoena.

- b. Provide prior notice and an opportunity to be represented to the Union, of any formal discussion between one or more representatives of the Agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.
- c. Posting (see 1<sup>st</sup> 2 examples).

## 6. **WEINGARTEN RIGHTS.**

**(a) and (b) omitted**

**(c) THEORY OF THE CASE AND RELIEF SOUGHT**

1. **THEORY OF THE CASE:**

Respondent violated section 7116(a)(1) and (8) of the Statute by denying the Union the right to speak on behalf of a bargaining unit employee at an examination in connection with an investigation under section 7114(a)(2)(B) of the Statute.

2. **RELIEF SOUGHT** (particular to Weingarten rights):\*

Counsel for the General Counsel will seek an order requiring Respondent to:

- a. Cease and desist from:
  - Refusing to allow the participation of a Union representative at board of investigation hearings concerning activities of its employees where such representation has been requested by an employee, and where the employee reasonably believes that the

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hearing could result in disciplinary action against him/her.

- b. Establish that no discipline to the unit employee occurred as a result of the board of investigation hearing that took place on (date); that the information from that hearing was not relied on so as to adversely affect the unit employee; and that nothing has been retained in the unit employee's as a result of the interview could adversely affect the employee. If this cannot be established, repeat the portion of the hearing during which the employee was denied his/her right to Union representation, if requested by the Union. In repeating the hearing, afford the employee her statutory right to Union representation. After repeating the hearing, reconsider any disciplinary action taken against the employee and/or the retention in the employee's personnel records of information obtained during the (date) hearing. As appropriate, make the employee whole for any losses suffered to the extent consistent with the decision on reconsideration and, if relevant, afford her whatever grievance and appeal rights are due under any relevant collective bargaining agreement, law or regulation.
- c. Posting (see 1<sup>st</sup> 2 examples).

## **7. DISCRIMINATION BASED ON EXERCISE OF PROTECTED ACTIVITY.**

**(a) and (b) omitted**

**(c) THEORY OF THE CASE AND RELIEF SOUGHT**

### **1. THEORY OF THE CASE:**

The respondent violated section 7116(a)(1), (2) and (4) by denying a "Sustained Superior Performance Award" to a unit employee because of protected activities that the unit employees was engaged in on behalf of the Union.

2. RELIEF SOUGHT (particular to discrimination cases):\*

Counsel for the General Counsel will seek an order requiring Respondent to:

- a. Cease and desist from:
  - Discriminating against employees by disapproving recommendations that they receive “Sustained Superior Performance Award” because they engaged in protected activities on behalf of the Union.
  - In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights assured by the Statute.
- b. Make whole the unit employee by granting him the “sustained Superior Performance Award” recommended by his supervisor, not to exceed \$5000, with interest for the period in which his award was improperly denied.
- c. Posting (see 1<sup>st</sup> 2 examples).

**8. DUTY OF FAIR REPRESENTATION.**

**(a) and (b) omitted**

**(c) THEORY OF THE CASE AND RELIEF SOUGHT**

1. THEORY OF THE CASE:

Respondent failed to meet its duty of fair representation under section 7114(a)(1) of the Statute, and thus violated section 7116(b)(1) and (8), when it did not permit non-union members of

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the bargaining unit to participate in a poll concerning the method of determining seniority to calculate seniority-based benefits.

2. RELIEF SOUGHT (particular to duty of fair representation cases):\*

Counsel for the General Counsel will seek an order requiring Respondent Union to:

- a. Cease and desist from:
  - Denying unit employees and who are employed in the Agency's Division III and who are not members of the Union the opportunity to participate in a poll concerning the type of seniority to be used for calculating seniority-based benefits.
  - Interfering with, restraining or coercing employees in their rights to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal.
  - In any like or related manner interfering with, restraining or coercing unit employees in the exercise of their rights assured under the Statute.
- b. Request that the Agency's Division III reinstate the type of seniority used for calculating seniority-based benefits which was in effect prior to (date).
- c. In the event that Respondent Union conducts a poll among unit employees of the Agency's Division III, concerning the type of seniority-based benefits, the Agency must grant to all unit employees alike the opportunity to participate in the poll.
- d. Make whole any unit employees employed in the Agency's Division III, for any loss of pay, benefits or differentials suffered by such employee as a result of the implementation of Division III seniority on (date), to calculate seniority-based benefits.

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\*Counsel for the General Counsel reserves the right to amend the relief requested, and will promptly notify respondent's counsel of such decision, based upon a review of the documents provided by respondent pursuant to subpoena.

- e. Posting (see 1<sup>st</sup> 2 examples).