

## **EXCEPTIONS TO ARBITRATION AWARD**

**Important Information:** Federal-sector parties who have participated in binding arbitration pursuant to 5 U.S.C. § 7121(b)(C)(iii) may use this form to file exceptions to the resulting arbitration award with the Federal Labor Relations Authority (the Authority). Only the officially designated representatives of an agency or union may file such exceptions; absent written authorization from a party to an arbitration proceeding, grievants or other non-parties may not file such exceptions. *See* 5 C.F.R. § 2425.2.

The information requested below may be provided either on this form or in a separately created document. *See* 5 C.F.R. § 2425.4. The form is available at [www.flra.gov](http://www.flra.gov). **Please note** that, if this form exceeds 10 double-spaced pages in length (excluding the statement of service) once you have filled it out, then you must include a table of contents with this form. *See* 5 C.F.R. § 2429.29. However, you may delete portions of the form that do not apply, such as portions discussing grounds for review that you are not raising.

If you have any questions about completing this form, or filing exceptions generally, then please contact the Authority's Office of Case Intake and Publication at (771) 444-5805.

Additional information about the time limits and procedural requirements for filing exceptions, as well as the arbitration process in general, can be found in 5 C.F.R. parts 2425 and 2429 and in the Guide to Arbitration at [www.flra.gov](http://www.flra.gov).

### **Part I** **Background Information**

#### **1. Excepting party's information:**

Name:

Position:

Agency or Union:

Address:

Phone:

Fax:

E-mail address:

#### **2. Opposing party's information:**

Name:

Position:

Agency or Union:

Address:

Phone:

Fax:

E-mail address:

3. Arbitrator's information:

Name:

Address:

Phone:

Fax, if available:

E-mail address, if available:

4. Method of service of arbitrator's award, and date of service (check all that apply):

- U.S. mail = postmark date
- Commercial delivery = date deposited with commercial delivery service
- Personal delivery = date of delivery
- Fax = date transmitted
- E-mail = date transmitted
- Other – please describe: \_\_\_\_\_

5. If the award was served on you by more than one method, then the first method of service is controlling for purposes of calculating the time limits for filing exceptions. *See 5 C.F.R. § 2425.2(c)(4).* However, *please note* that if the award is served by fax, email, or personal delivery on one day, and also served by U.S. mail or commercial delivery on the same day, then you do not get 5 additional days to file your exceptions. *See 5 C.F.R. § 2425.2(c)(5).*

What is the date of service of the arbitrator's award? \_\_\_\_\_

6. Was the subject matter of the grievance raised as an unfair labor practice charge?

- Yes
- No

6a. If yes, then please answer all of the following questions:

- i. On what date was the unfair labor practice charge filed?
- ii. What is the case number?
- iii. What is the status of the case?
- iv. Please explain in detail how the unfair labor practice charge is related to the grievance:

7. Was the subject matter of the grievance raised under any other administrative procedures (for example, but not limited to, EEO or MSPB proceedings)?

[ ] Yes [ ] No

7a. If yes, then please answer all of the following questions:

- i. What type of administrative procedure?
- ii. What is the case number (if available and applicable)?
- iii. What is the status of the case?
- iv. Please explain in detail how the administrative procedure is related to the grievance:

The Authority will only find arbitration awards deficient based on the grounds set forth in 5 U.S.C. § 7122. Specifically, an arbitration award will be found deficient only if it is contrary to law, rule, or governing regulation, or is deficient on grounds applied by federal courts in reviewing arbitration awards in the private sector. The private-sector grounds currently recognized by the Authority are: the award is incomplete, ambiguous, or contradictory as to make implementation of the award impossible; the arbitrator was biased; the award is contrary to public policy; the arbitrator denied a fair hearing; the award is based on a nonfact(s); the award fails to draw its essence from the parties' collective bargaining agreement; and the arbitrator exceeded his or her authority. *See* 5 C.F.R. § 2425.6.

In determining whether the arbitrator's award is deficient, the Authority will consider only those arguments explicitly raised by the parties.

1. Are you arguing that the award is contrary to law or government-wide regulation?

[ ] Yes [ ] No

- 1a. If no, then skip to question 2; if yes, then you must answer questions 1b through 1e for each law or government-wide regulation cited. *Failure to fully explain your argument could result in dismissal or denial of your exception. See 5 C.F.R. § 2425.6.*
- 1b. Please provide a full, precise citation to each of the law(s) or government-wide regulation(s) on which you rely:
- 1c. For each of the law(s) or government-wide regulation(s) cited, please answer all of the following questions:
  - i. If the cited law(s) or regulation(s) contain more than one subsection, then please specify the subsection(s) on which you rely:
  - ii. For each law or regulation cited, please explain how the arbitrator's award conflicts with the law or government-wide regulation:
  - iii. Please provide citations to any supporting authority on which you rely:
- 1d. For each of the arguments and statements in this section, please state whether you raised that argument to the arbitrator, and if not, then why you reasonably would not have known to raise it (see 5 C.F.R. §§ 2425.4, 2429.5):
- 1e. If you raised the argument or statement below, then please provide any available supporting citations to the award or record evidence (e.g., pertinent portions of hearing transcripts or post-hearing briefs), and attach pertinent portions of any cited record evidence to your exceptions:

2. Are you arguing that the award is contrary to an agency-wide regulation?

[  ] Yes      [  ] No

- 2a. If no, then skip to question 3; if yes, then you must answer questions 2b through 2e for each agency-wide regulation(s) cited. *Failure to fully explain your argument could result in dismissal or denial of your exception. See 5 C.F.R. § 2425.6.*
- 2b. Please specify the agency-wide regulation on which you rely, and either include the language of the regulation here or attach that language to this form. If you are relying on a specific subsection of a regulation, then please specify.
- 2c. For each regulation cited, please explain how the arbitrator's award conflicts with that regulation:
- 2d. For each of the arguments and statements in this section, please state whether you raised that argument to the arbitrator, and if not, then why you reasonably would not have known to raise it (see 5 C.F.R. §§ 2425.4, 2429.5):

2e. If you raised the argument or statement below, then please provide any available supporting citations to the award or record evidence (e.g., pertinent portions of hearing transcripts or post-hearing briefs), and attach pertinent portions of any cited record evidence to your exceptions:

3. Are you arguing that the award is incomplete, ambiguous, or contradictory as to make implementation of the award impossible?

Yes       No

3a. If no, then skip to question 4; if yes, then you must answer questions 3b through 3e. *Failure to fully explain your argument could result in dismissal or denial of your exception. See 5 C.F.R. § 2425.6.*

3b. Please explain why the meaning and effect of the award is unclear, and why, as a result, it is impossible to implement the award:

3c. If you have not done so already, then please provide citations to any supporting authority on which you rely:

3d. For each of the arguments and statements in this section, please state whether you raised that argument to the arbitrator, and if not, why you reasonably would not have known to raise it (see 5 C.F.R. §§ 2425.4, 2429.5):

3e. If you raised the argument or statement below, then please provide any available supporting citations to the award or record evidence (e.g., pertinent portions of hearing transcripts or post-hearing briefs), and attach pertinent portions of any cited record evidence to your exceptions:

4. Are you arguing that the arbitrator was biased?

Yes       No

4a. If no, then skip to question 5; if yes, then you must answer questions 4b through 4e. *Failure to fully explain your argument could result in dismissal or denial of your exception. See 5 C.F.R. § 2425.6.*

4b. Please explain how the award was procured by improper means, there was partiality or corruption on the part of the arbitrator, or the arbitrator engaged in misconduct that prejudiced the rights of the party:

4c. If you have not done so already, then please provide citations to any supporting authority on which you rely:

4d. For each of the arguments and statements in this section, please state whether you raised that argument to the arbitrator, and if not, then why you reasonably would not have known to raise it (see 5 C.F.R. §§ 2425.4, 2429.5):

4e. If you raised the argument or statement below, then please provide any available supporting citations to the award or record evidence (e.g., pertinent portions of hearing transcripts or post-hearing briefs), and attach pertinent portions of any cited record evidence to your exceptions:

5. Are you arguing that the award is contrary to public policy?

Yes       No

5a. If no, then skip to question 6; if yes, then you must answer questions 5b through 5e. *Failure to fully explain your argument could result in dismissal or denial of your exception. See 5 C.F.R. § 2425.6.*

5b. Please cite the alleged public policy, explain how it has its source in laws and legal precedents (as opposed to general considerations of supposed public interests), and clearly explain how it has been violated:

5c. If you have not done so already, then please provide citations to any supporting authority on which you rely:

5d. For each of the arguments and statements in this section, please state whether you raised that argument to the arbitrator, and if not, then why you reasonably would not have known to raise it (see 5 C.F.R. §§ 2425.4, 2429.5):

5e. If you raised the argument or statement below, then please provide any available supporting citations to the award or record evidence (e.g., pertinent portions of hearing transcripts or post-hearing briefs), and attach pertinent portions of any cited record evidence to your exceptions:

6. Are you arguing that the arbitrator denied you a fair hearing?

Yes       No

6a. If no, then skip to question 7; if yes, then you must answer questions 6b through 6e. *Failure to fully explain your argument could result in dismissal or denial of your exception. See 5 C.F.R. § 2425.6.*

6b. Please explain how the arbitrator refused to hear or consider pertinent or material evidence, or how other actions in conducting the proceeding so prejudiced you that it affected the fairness of the proceedings as a whole:

6c. If you have not done so already, then please provide citations to any supporting authority on which you rely:

6d. For each of the arguments and statements in this section, please state whether you raised that argument to the arbitrator, and if not, then why you reasonably would not have known to raise it (see 5 C.F.R. §§ 2425.4, 2429.5):

6e. If you raised the argument or statement below, then please provide any available supporting citations to the award or record evidence (e.g., pertinent portions of hearing transcripts or post-hearing briefs), and attach pertinent portions of any cited record evidence to your exceptions:

7. Are you alleging that the award is based on a nonfact(s)?

[  ] Yes      [  ] No

7a. If no, then skip to question 8; if yes, then you must answer questions 7b through 7f. *Failure to fully explain your argument could result in dismissal or denial of your exception. See 5 C.F.R. § 2425.6.*

7b. Please explain why a central fact underlying the award is clearly erroneous, but for which the arbitrator would have reached a different conclusion – *note that factual matters that were disputed before the arbitrator will not provide a basis for finding the award based on a nonfact.*

7c. If you have not done so already, then please provide citations to any supporting authority on which you rely:

7d. Is the alleged nonfact a factual matter that was disputed before the Arbitrator (and if so, please provide supporting citations to page numbers of award and/or transcript, if available)?

7e. For each of the arguments and statements in this section, please state whether you raised that argument to the arbitrator, and if not, then why you reasonably would not have known to raise it (see 5 C.F.R. §§ 2425.4, 2429.5):

7f. If you raised the argument or statement below, then please provide any available supporting citations to the award or record evidence (e.g., pertinent portions of hearing transcripts or post-hearing briefs), and attach pertinent portions of any cited record evidence to your exceptions:

8. Are you alleging that the award fails to draw its essence from the parties' collective bargaining agreement?

[  ] Yes      [  ] No

8a. If no, then skip to question 9; if yes, then you must answer questions 8b through 8f. *Failure to fully explain your argument could result in dismissal or denial of your exception. See 5 C.F.R. § 2425.6.*

8b. Please specify the agreement provision(s) on which you rely, and either include the language of the provision(s) here or attach that language to this form:

8c. Please explain how the award: cannot in any rational way be derived from the agreement; or is so unfounded in reason and fact and so unconnected with the wording and purpose of the collective bargaining agreement as to manifest an infidelity to the obligation of the arbitrator; or does not represent a plausible interpretation of the agreement; or evidences a manifest disregard of the agreement:

8d. If you have not done so already, then please provide citations to any supporting authority on which you rely:

8e. For each of the arguments and statements in this section, please state whether you raised that argument to the arbitrator, and if not, then why you reasonably would not have known to raise it (see 5 C.F.R. §§ 2425.4, 2429.5):

8f. If you raised the argument or statement below, then please provide any available supporting citations to the award or record evidence (e.g., pertinent portions of hearing transcripts or post-hearing briefs), and attach pertinent portions of any cited record evidence to your exceptions:

9. Are you alleging that the arbitrator exceeded his or her authority?

[ ] Yes      [ ] No

9a. If no, then skip to question 10; if yes, then you must answer questions 9b through 9f. *Failure to fully explain your argument could result in dismissal or denial of your exception. See 5 C.F.R. § 2425.6.*

9b. Please explain how the arbitrator: failed to resolve an issue that *was* submitted to arbitration; resolved an issue that *was not* submitted to arbitration; disregarded specific limitations on his or her authority; or awarded relief to individuals who were not encompassed within the grievance:

9c. If you have not done so already, then please provide citations to any supporting authority on which you rely:

9d. Did the parties stipulate to the issue(s) before the arbitrator?

[ ] Yes      [ ] No

9e. For each of the arguments and statements in this section, please state whether you raised that argument to the arbitrator, and if not, then why you reasonably would not have known to raise it (see 5 C.F.R. §§ 2425.4, 2429.5):

9f. If you raised the argument or statement below, then please provide any available supporting citations to the award or record evidence (e.g., pertinent portions of hearing transcripts or post-hearing briefs), and attach pertinent portions of any cited record evidence to your exceptions:

10. Are you arguing that the award is deficient on a ground not set forth in this form?

[ ] Yes [ ] No

10a. If no, then skip to Part IV; if yes, then you must answer questions 10b through 10e. *Failure to fully explain your argument could result in dismissal or denial of your exception. See 5 C.F.R. § 2425.6.*

10b. Keeping in mind that arbitration awards will only be found deficient if they are contrary to law, rule, or regulation, or on grounds applied by federal courts in the private sector (as described above), please explain how the award is deficient:

10c. If you have not done so already, then please provide citations to any supporting authority on which you rely:

10d. For each of the arguments and statements in this section, please state whether you raised that argument to the arbitrator, and if not, then why you reasonably would not have known to raise it (see 5 C.F.R. §§ 2425.4, 2429.5):

10e. If you raised the argument or statement below, then please provide supporting citations to the award or record evidence (e.g., pertinent portions of hearing transcripts or post-hearing briefs), and attach pertinent portions of any cited record evidence to your exceptions:

### **Part III Request for Expedited, Abbreviated Decision**

1. If the arbitration matter does not involve an unfair labor practice, then are you requesting an expedited, abbreviated decision within the meaning of 5 C.F.R. § 2425.7?
2. If yes, then please explain why such a decision would be appropriate in this case (including considerations of the case's complexity, potential for precedential value, and similarity to other, fully detailed Authority decisions regarding the same or similar issues, see 5 C.F.R. §2425.7):

### **Part IV Additional Information**

Please provide any additional information that you believe is necessary for the Authority to consider in resolving the exceptions.

**Part V****Checklist with Statement of Service and Signature**

**All exceptions and attached documents filed with the Authority must comply with the requirements set forth in parts 2425 and 2429 of the Authority's Regulations.**

A complete copy (including all attachments) of exceptions must:

- [ ] Be served by certified mail, first-class mail, commercial delivery, personal delivery, or by email (but only if the opposing party has agreed to email service) on all counsel of record or other designated representative(s) of parties, upon parties not so represented, and upon any interested person who has been granted permission by the Authority to present written and/or oral argument as amicus curiae; service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. 5 C.F.R. § 2429.27(a), (b).
- [ ] Contain a signed and dated statement of service with the names and addresses of parties served, date of service, nature of the document served, and the manner in which service was made. 5 C.F.R. § 2429.27(c).
- [ ] Contain an original or clean copy of all documents, which are capable of reproduction. 5 C.F.R. § 2429.25.
- [ ] Include a table of contents if the exceptions exceed 10 double-spaced pages in length. 5 C.F.R. § 2429.29.
- [ ] Be addressed to: Chief, Office of Case Intake and Publication  
Federal Labor Relations Authority  
Docket Room, Suite 300  
1400 K Street NW  
Washington, D.C. 20424-0001

**For questions about filing requirements**, contact the above office at (771) 444-5805 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday (except Federal holidays).

## **Statement of Service for filing Exceptions to an Arbitration Award**

### **STATEMENT OF SERVICE**

I certify that a complete copy of the [Agency's/Union's] Exceptions, including all attachments, were filed with the Office of Case Intake and Publication, Federal Labor Relations Authority, Washington, D.C., by [indicate whether by certified mail, first class mail, commercial delivery (indicate whether Fed Ex, UPS, etc.), or personal delivery], and were sent this day to the following by the method indicated:

Name:

Title:

Mailing Address:

City, State, Zip Code:

Phone Number:

Method of service (check):  certified mail

first class mail

commercial delivery \_\_\_\_\_ (indicate whether Fed Ex, UPS, etc.)

personal delivery

email (but only when the receiving party has agreed to service by email under 5 C.F.R. § 2429.27(b)(6))

other (please specify) \_\_\_\_\_

Name:

Title:

Mailing Address:

City, State, Zip Code:

Phone Number:

Method of service (check):  certified mail

first class mail

commercial delivery \_\_\_\_\_ (indicate whether Fed Ex, UPS, etc.)

personal delivery

email (but only when the receiving party has agreed to service by email under 5 C.F.R. § 2429.27(b)(6))

other \_\_\_\_\_

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**Date**

**Name of Representative/Title**

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**Signature of Representative**