## Agency Statement of Position on Petition for Review of Negotiability Issues for Use with Proposals

### USE THIS FORM ONLY FOR NEGOTIABILITY DISPUTES WHERE THE UNION HAS SUBMITTED A BARGAINING PROPOSAL TO THE AGENCY AND THE PARTIES HAVE NOT REACHED AGREEMENT ON THE PROPOSAL AND ITS NEGOTIABILITY.

**Important Information:** This form is to be completed by the Agency in response to a Union’s petition for review. The purpose of the statement of position is to inform the Authority and the Union’s representative why the Agency contends that specific contract language is not negotiable. Section 2424.24 of the Authority’s Regulations requires the Agency in this statement of position to, among other things, set forth its understanding of each proposal; state any disagreement with the facts, arguments, or meaning of each proposal set forth in the Union’s petition for review; and supply all argument and authorities in support of its position.

The Agency must file the statement of position within thirty (30) calendar days after the date the Agency head receives a copy of the Union’s petition for review, unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of the Authority’s Regulations.

The information requested below may be provided on this form or in a separately created document. The form is available at [www.flra.gov](http://www.flra.gov), in a format that can be completed using standard word processing software. If your entire statement is more than 10 pages long, then you must include a table of contents. If you have questions about completing this form, please contact the Authority’s Office of Case Intake and Publication at (771) 444-5805.

The regulations governing negotiability proceedings are in 5 C.F.R. part 2424 of the Authority’s Regulations, and are available at [www.flra.gov](http://www.flra.gov).

## Part I – Background

1. **Case Number:**

**1a. Case Caption:**

|  |  |
| --- | --- |
| **2. Name and Address of Agency:** | **3. Agency Bargaining Representative Contact Information:** |
| Name: | Name:  |
| Address: | Address (if different from Question 2): |
| Title:  |
| Phone:  |
| Fax:  |
| Email:  |

4. Do you agree with the background information presented in the Union’s answers to questions 1 through 8 in its petition for review?

[  ] Yes      [  ] No

4a. If No, explain and provide appropriate information in support of your explanation.

5. Was a post-petition conference conducted in this case?

[  ] Yes      [  ] No

5a. If Yes, do you agree with the information contained in the record of the post-petition conference?

[  ] Yes      [  ] No

5b. If No, explain and provide appropriate information in support of your explanation.

## Part II – The Agency’s Position

6. Does the Agency wish to withdraw any allegation of nonnegotiability of any proposal, in whole or in part?

[  ] Yes      [  ] No

6b. If Yes, identify each relevant proposal.

 Proposal \_\_\_\_\_\_\_\_ Date Withdrawn \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For each remaining proposal, **answer questions 7 through 11.** Where narrative/explanatory answers are required, for each question you may either: (1) type your complete response; or (2) type “see attached” and include your answers as an attachment. Each party has the burden to give sufficiently detailed explanations to enable the Authority to understand the party’s position regarding the meaning, operation, and effects of a proposal. A party’s failure to provide such explanations may affect the Authority’s decision in a manner that is adverse to the party. *Id.* § 2424.32(c). **If you type your responses on this form, then make a separate copy of questions 7 through 11 for each proposal.**

**PROPOSAL \_\_\_\_\_\_\_\_**

7. *If the Agency’s position is different from the Union’s position in its petition for review on any of the following, explain, with support, the Agency’s position:*

7a. The meaning attributed to the proposal, including the Union’s explanation of the meaning, terms of art, acronyms, technical language, or any other aspect of the language of the proposal that is not in common usage.

7b. How the proposal would work and what impact it will have, including the Agency’s basis for disagreeing with the Union’s explanation.

## Part III – Legal Arguments

Set forth the Agency’s position on any matters relevant to the petition that it wishes the Authority to consider in reaching its decision. Include a statement of the arguments and authorities supporting any bargaining obligation or negotiability claims.

The Agency is responsible for raising and supporting arguments that each proposal is outside the duty to bargain or contrary to law. Failure to raise and support an argument may, in the Authority’s discretion, be deemed a waiver of such argument. Failure to respond to an argument or assertion raised by the other party may, in the Authority’s discretion, be treated as conceding such argument or assertion. Failure to participate in a post-petition conference under § 2424.23 of the Authority’s Regulations, a direction or proceeding under § 2424.31, or other failure to provide timely or responsive information pursuant to an Authority Order may result in granting the petition for review and directing bargaining. 5 C.F.R. § 2424.32.

In setting forth your arguments, answer questions 8 through 11. Provide legal arguments addressing each question to which you answer “Yes.” **Provide a separate copy of questions 8 through 11 for each proposal.**

For each argument, cite any law, rule, regulation, section of a collective-bargaining agreement, or other authority relied on in your argument or referenced in the proposal. Explain how the cited law, rule, regulation, section of a collective-bargaining agreement, or other authority relates to your argument or the proposal. Attach to this statement a copy of all such material, except for federal statutes, government-wide regulations, or judicial and administrative decisions.

Are copies of materials attached?

[  ] Yes      [  ] No

If Yes, list the materials attached:

**PROPOSAL \_\_\_\_\_\_\_\_\_\_**

8. Is there a bargaining-obligation dispute, as defined at 5 C.F.R. § 2424.2(a), which the Agency asserts eliminates its obligation to bargain over the proposal?

[  ] Yes      [  ] No

8a. If Yes, list each dispute and describe your reasons for asserting that the Agency does not have a duty to bargain over the proposal, including the factual basis for the dispute and legal arguments. For each dispute, state whether you believe there are factual questions that the Authority must resolve in order to resolve the dispute.

9. Does the Agency assert that the proposal is **contrary** to any of the following:

9a. Does the Agency assert that the proposal is contrary to a law, rule, government-wide regulation, or Agency regulation?

[  ] Yes      [  ] No

If Yes, identify the law, rule, or regulation, with appropriate citation, and explain why the proposal is contrary to that law, rule, or regulation.

9b. If the Agency asserts that the proposal is inconsistent with an *Agency* *regulation*, is there a compelling need for the regulation pursuant to § 2424.50 of the Authority’s Regulations? Explain why.

9c. Does the Agency assert that the proposal is contrary to a management right set out in 5 U.S.C. § 7106(a)?

[  ] Yes      [  ] No

If Yes, identify the management right and explain why the proposal is contrary to that right.

10. If the Union has claimed that the proposal is one of the following, and you disagree, explain why you disagree:

10a. If the Union has claimed that the proposal is a permissive subject of bargaining under 5 U.S.C. § 7106(b)(1) and you disagree, explain why you disagree.

10b. If the Union has claimed that the proposal is a procedure under 5 U.S.C. § 7106(b)(2) and you disagree, explain why you disagree.

10c. If the Union has claimed that the proposal is an appropriate arrangement under 5 U.S.C. § 7106(b)(3) and you disagree, explain why you disagree.

11. Are there any other grounds on which the Agency asserts that the proposal is not negotiable?

[  ] Yes      [  ] No

11a. If Yes, identify the ground(s) and explain why.

## Part IV – Hearing

12. Do you believe that a hearing or other fact-finding procedure is necessary to resolve any issues presented in this case? *See* 5 C.F.R. § 2424.31. (When answering this question, consider that the Authority rarely grants hearing requests. *Id.* § 2424.24(c)(4).)

[  ] Yes      [  ] No

12a. If Yes, explain what those issues are and why they require a hearing.

### Part V – Checklist with Statement of Service and Signature

**All documents filed with the Authority must comply with the requirements set forth in part 2429 of the Authority’s Regulations.**

A complete copy (including all attachments) of an Agency’s statement of position must:

• Be served by certified mail, first-class mail, commercial delivery, in person, or email (but only when the receiving party has agreed to be served by email) on the Principal Union Bargaining Representative at the negotiations. 5 C.F.R. §§ 2424.2(g), 2429.27(b).

• Contain a signed and dated statement of service with names and addresses of parties served, date of service, nature of document served, and method of service. (See below.) 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.
* Be addressed to:

Case Intake and Publication
Federal Labor Relations Authority
Docket Room, Suite 300
1400 K Street, NW
Washington, D.C. 20424-0001

## STATEMENT OF SERVICE

I certify that a complete copy of the Agency’s statement of position, including all attachments, in the case of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [UNION] and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [AGENCY], Case Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was filed with the Office of Case Intake and Publication, Federal Labor Relations Authority, Washington, D.C., by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [indicate method of service], and was sent this day to:

**Union Principal Bargaining Representative**
Name:

Title:

Address:

Phone:

Method of Service: [ ] certified mail

 [ ] first-class mail

 [ ] commercial delivery (type: FedEx, 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) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Name of filing party

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of Agency’s representative