## Union Response to Agency Statement of Position on Petition for Review of Negotiability Issues for Use with Disapproved Provisions

**USE THIS FORM ONLY IF THE UNION IS SEEKING REVIEW OF A PROVISION AGREED TO BY THE UNION AND AGENCY REPRESENTATIVE THAT HAS BEEN DISAPPROVED BY THE AGENCY HEAD ON REVIEW PURSUANT TO 5 U.S.C. § 7114(c).**

***Important Information:*** This form is to be completed by the Union’s representative in response to the Agency’s statement of position. Section 2424.25 of the Authority’s Regulations provides that the purpose of this response is to inform the Authority and the Agency why, despite the Agency’s arguments in its statement of position, the contract language at issue is negotiable, and whether the Union disagrees with any facts or arguments in the Agency’s statement of position.

The Union must file this response within fifteen (15) calendar days after the date the Union receives a copy of the Agency’s statement of position, 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 response is more than 10 pages long, 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.

## Part I – Background

1. **Case Number:**

**1a. Case Caption:**

1. Was there a post-petition conference in this case?

[ ] Yes [ ] No

2a. If Yes, do you agree with the information contained in the record of the post-petition conference?

[ ] Yes [ ] No

2b. If No, explain and provide appropriate information in support of your explanation.

## Part II – Response to Agency’s Statement of Position

Set forth the Union’s position on any matters raised in the Agency’s statement of position that it wishes the Authority to consider in reaching its decision, including a statement of the arguments and authorities supporting any position. You do not need to repeat information or arguments that are contained in your petition for review.

In setting forth your response, **answer questions 3 through 8, providing separate answers for each provision** that requires an explanation to those questions. 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 provision. A party’s failure to provide such explanations may affect the Authority’s decision in a manner that is adverse to the party. 5 C.F.R. § 2424.32(c). **If you type your answers on this form, then make a separate copy of questions 3 through 8 for each provision.**

The Union is responsible for raising and supporting arguments that a provision is within the duty to bargain, within the duty to bargain at the Agency’s election, or not contrary to law. Where the Union severs a previously submitted provision, the Union must explain how the severed portion(s) stand alone with independent meaning, and how the severed portion(s) would operate. 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.

For each argument, cite any law, rule, regulation, section of a collective-bargaining agreement, or other authority you rely on. Explain how the cited law, rule, regulation, section of a collective-bargaining agreement, or other authority relates to your argument or the provision. Attach to this response 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:

**PROVISION \_\_\_\_\_\_\_**

1. Do you disagree with any claim regarding the provision made by the Agency in questions 7 through 10 of the Agency’s statement of position?

[ ] Yes      [ ] No

3a. If Yes, explain why and provide support for your explanation as to each claim with which you disagree. You do not have to repeat arguments that you already made in the petition for review.

1. If the Agency contends that the provision interferes with a management right set out in 5 U.S.C. § 7106(a), does the Union claim that the provision requires that the Agency comply with an applicable law within the meaning of 5 U.S.C. § 7106(a)(2)?

[ ] Yes      [ ] No

4a. If Yes, identify the applicable law and explain how that law relates to the provision.

1. Does the Union claim that the provision concerns a matter negotiable at the election of the Agency under 5 U.S.C. § 7106(b)(1)?

[ ] Yes      [ ] No      [ ] Answered in Petition for Review

5a. If Yes, explain why and provide support for your explanation.

5b. If Yes, explain which category (e.g., numbers, types and grades, technology) it concerns and why?

1. Does the Union claim that the provision constitutes a negotiable procedure as set forth in 5 U.S.C. § 7106(b)(2)?

[ ] Yes      [ ] No      [ ] Answered in Petition for Review

6a. If Yes, explain why and provide support for your explanation.

1. Does the Union claim that the provision constitutes an appropriate arrangement for employees adversely affected by the exercise of management rights, as set forth in 5 U.S.C. § 7106(b)(3)?

[ ] Yes      [ ] No      [ ] Answered in Petition for Review

7a. If Yes, explain why and provide support for your explanation. In your explanation, be sure to include the following:

* Identify the management right(s) the provision addresses.
* Identify the employees who the Union asserts will be adversely affected by the exercise of the management right(s).
* Describe the adverse effect and why it is adverse.
* Describe the impact of the provision.
* Describe all those employees that the arrangement will impact and explain how it will help.
* Describe any employees who are not adversely affected by the exercise of the management right(s) that the provision may impact.
* Describe how the arrangement is appropriate under Authority case law.
1. If the Agency is relying on *Agency* rule(s) or regulation(s) in its statement of position:

8a. Does the Union claim that the rule(s) or regulation(s) violate any applicable law, rule regulation, the parties’ collective-bargaining agreement, or other appropriate authority outside the Agency?

[ ] Yes      [ ] No

If Yes, explain why and provide support for your explanation.

8b. Does the Union claim that the rule(s) or regulation(s) were not issued by the Agency or by any primary national subdivision of the Agency, or that they are otherwise not applicable to bar negotiations under 5 U.S.C. § 7117(a)(3)?

[ ] Yes      [ ] No

If Yes, explain why and provide support for your explanation.

8c. If the Agency contends that a compelling need exists for the rule(s) or regulation(s), does the Union claim that such a need does not exist?

[ ] Yes      [ ] No

If Yes, explain why and provide support for your explanation.

## Part III – Severance

Severing a provision into separate parts makes each part the subject of a separate negotiability determination. Severance requires that each part has independent meaning, and should be used only where you have an interest in determining whether any of the separate parts is within the duty to bargain or is contrary to law even if the other part or parts is not.

9. Are you severing any part(s) of the provision(s)?

[ ] Yes      [ ] No

9a. If Yes, specify which provision(s) you are severing.

9b. If Yes, explain how each of the severed portions stands alone and would operate.

**Part IV – 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 a Union’s response 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:

(1) the Principal Agency Bargaining Representative at the negotiations; and

(2) the Head of the Agency (or designee). 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 Union’s response, 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:

**Agency 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) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**The Head of the Agency (or designee)**\*/
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

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 Signature of Union’s representative

\*/For example, for components of the U.S. Department of Labor, the Head of the Agency (or “Agency Head”) is the Secretary of Labor, or the Secretary’s designee.