Agency Statement of Position on Petition for Review of Negotiability 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.

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

The information requested below may be provided on this form or in a separately created document. The form is available at www.flra.gov, in a format that can be completed using standard word processing software. If you have questions about completing this form, please contact the Authority's Office of Case Intake and Publication at (202) 218-7740.

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.

Part I - Background

1.	Case Number and Caption		
2.	Name and Address of Agency: Name: Address:	3.	Agency Bargaining Representative Contact Information: Name: Title: Address (if different from Question 3): Phone: Fax: Email:

4. Do you agree with background information presented in 1 through 7 in its petition for review?	the Union's answers to questions [] Yes [] No	
4a. If No, explain and provide appropriate information in su	pport 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 conference?	e record of the post-petition [] Yes [] No	
5b. If No, explain and provide appropriate information in su	pport 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 part?		
[] Yes [] No Date Withdrawn		
6b. If Yes, identify each relevant proposal(s).		
For each remaining proposal anguage acceptions 7 through 10	Whore pornetive/evalences	
For each remaining proposal, answer questions 7 through 10. Where narrative/explanatory answers are required, for each box you may either: (1) type your complete response; or (2) type "see attached" and include your answers as an attachment. If you type your responses on this form, then make a separate copy of pages 3, 5, and 6 of this form 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 which 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

Are copies of materials attached?

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 made by the Union in the petition for review.

The Agency is responsible for raising and supporting arguments that each proposal is outside the duty to bargain or contrary to law. Where the Union has asserted that severance is appropriate, the Agency, if it objects to that assertion, is also responsible for raising and supporting arguments why severance is not appropriate. Failure to raise and support an argument will, where appropriate, be deemed a waiver of such argument. Failure to respond to an argument or assertion raised by the other party will, where appropriate, be deemed a concession to such argument or assertion. Failure to participate in a post-petition conference under section 2424.23 of the Authority's Regulations, a direction or proceeding under section 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 that you answer "Yes." Use a separate copy of this page 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. Attach to this petition a copy of all such material, except you do not have to provide a copy of federal statutes, government-wide regulations, or judicial and administrative decisions.

[] Yes

[] No

If your entire statement is more than 10 pages long, you must include a table of contents.

F []	L] - ' *
If Was list the metarials attached.	
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	ļ	
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. 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 section 2424.11 of the Authority's Regulations? Explain why.		
9c. 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. A permissive subject of bargaining under 5 U.S.C. § 7106(b)(1).	
10b. A procedure under 5 U.S.C. § 7106(b)(2).	
10c. An appropriate arrangement under 5 U.S.C. § 7106(b)(3).	
11. Are there any other grounds on which the Agency asserts the proposal is not negotiable?	
[] Yes [] No	
11a. If Yes, identify the ground and explain why.	

Part IV - 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 sought 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 is not.				
12. If the Union has requested severance in the petition for review, does the Agency oppose the request? [] Yes [] No [] Not requested				
12a. If Yes, explain, with specificity, why and provide support for your explanation.				
Part V - Hearing				
13. Do you believe that a hearing or other fact-finding procedure is necessary to resolve any issues presented in this case? [] Yes [] No				
13a. If Yes, explain what those issues are and why they require a hearing.				

Part VI - 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 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 and four (4) complete and legible copies of all documents . . . (5 C.F.R. § 2429.25)
- Be addressed to:

Case Intake and Publication Federal Labor Relations Authority Docket Room, Suite 201 1400 K Street, NW Washington, D.C. 20424-0001 Statement/Certificate of Service to be used by Agency filing a Statement of Position on petition for review of negotiability issues.

STATEMENT OF SERVICE

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certify that a complete copy of the Agency's statement of position, including all attachments, in the case of the, case number, were filed with the Office of Case Intake and Publication, Federal Labor Relations Authority, Washington, D.C., and were sent this day to:			
Union Principal Bargaining Representative (Title and Mailing Address)			
The Head of the Agency (or designee) */ (Title and Mailing Address) (if applicable) Indicate near each name the Method of Service.			
Date	Name of filing party		
-	Signature of Agency's representative		
*/ <i>E.g.</i> , for components of the U.S. Department of Defense, the Head of the Agency (or "Agency Head") is the Secretary of Defense, or his or her designee. <i>See</i> 5 C.F.R. § 2424.2(g) ("Service means the delivery of copies of documents filed with the Authority to the other party's principal bargaining representative and, in the case of an exclusive representative, also to the head of the agency.")			