



## **Part II - Response to Agency's Statement of Position**

Set forth the Union's position on any matters raised in the Agency 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 proposal** that requires an explanation to those questions. 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 through 5 of this form for each proposal.**

The Union is responsible for raising and supporting arguments that a proposal is within the duty to bargain, within the duty to bargain at the Agency's election, or not contrary to law. Where the Union has claimed that severance is appropriate, the Union is also responsible for raising and supporting arguments why severance is 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.

For each argument, cite any law, rule, regulation, section of a collective-bargaining agreement, or other authority you rely on. Attach to this response 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.

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

**Are copies of materials attached?**       Yes     No

**If Yes, list the materials attached:**

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

**3. Do you disagree with any claim regarding the proposal made by the Agency in questions 7 through 11 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 you already made in the petition for review.**

**4. If the Agency contends that the proposal interferes with a management right set out in 5 U.S.C. § 7106(a), does the Union claim that the proposal 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 proposal.**

**5. Does the Union claim that the proposal 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?**

**6. Does the Union claim that the proposal 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.**

**7. Does the Union claim that the proposal 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 the proposal addresses.**
- **Identify the employees who the Union asserts will be adversely affected by the exercise of that management right.**
- **Describe the adverse effect and why it is adverse.**
- **Describe the impact of the proposal.**
- **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 management's right that the proposal may impact.**
- **Describe how the arrangement is appropriate under Authority case law.**

**8. 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), to bar negotiations, 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 proposal 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 or parts is not.*

**9. If you have not previously indicated in the petition for review, do you wish to sever any part(s) of the proposal(s)?**  Yes  No

**9a. If Yes, specify which proposal(s) you wish severed.**

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

**10. If the Agency in its statement of position has opposed a previous request for severance and you disagree, explain why severance is appropriate despite the Agency's argument(s).**

## **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 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 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 Union in filing a response to the Agency statement of position on petition for review of negotiability issues.**

**STATEMENT OF SERVICE**

I certify that a complete copy of the Union’s response, including all attachments, in the case of the \_\_\_\_\_ and \_\_\_\_\_, 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:

**Agency Principal Bargaining Representative**  
(Title and Mailing Address)  
(The Principal Bargaining Representative is the individual who signed the Agency allegation.)

**The Head of the Agency (or designee) \*/**  
(Title and Mailing Address)

Indicate near each name the **Method of Service**.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of filing party

\_\_\_\_\_  
Signature of Union’s representative

\*/ *E.g.*, 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.