

Agency Reply to Union Response 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 Agency in reply to issues raised in the Union's response to the Agency's statement of position. Section 2424.26 of the Authority's Regulations provides that the purpose of the reply is to inform the Authority and the Union whether and why the Agency disagrees with any facts or arguments raised for the first time in the Union's response. In this reply, the Agency is to explain why a provision does not fit within any exception to management rights that was asserted by the Union in its response, and to explain why any severance of the provision requested is not appropriate.

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 this reply within fifteen (15) calendar days after the date that the Agency receives a copy of the Union's response to the Agency's statement of position.

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.

Part I - Background

1. Case Number and Caption

Part II - The Agency's Position

Set forth the Agency's position on any matters raised in the Union's response to the Agency statement of position that you wish the Authority to consider in reaching its decision, including a statement of the arguments and authorities supporting any position.

For each argument, **answer questions 2 through 9, providing separate answers for each provision** requiring explanations 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 provision.**

The Agency is responsible for raising and supporting arguments that the provision is illegal. 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.

For each argument, cite any law, rule, regulation, section of a collective-bargaining agreement, or other authority relied in your argument or referenced in the provision. Attach to this reply 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:

PROVISION _____

2. If the Union has asserted for the first time in its response that the provision concerns a matter under section 7106(b)(1), do you agree?

Yes No Union did not assert for the first time in its response

2a. If No, explain why and provide support for your explanation.

3. If the Union has asserted for the first time in its response that the provision is a procedure under section 7106(b)(2), do you agree?

Yes No Union did not assert for the first time in its response

3a. If No, explain why and provide support for your explanation.

4. If the Union has asserted for the first time in its response that the provision is an appropriate arrangement under section 7106(b)(3), do you agree?

Yes No Union did not assert for the first time in its response

4a. If No, explain why and provide support for your explanation.

5. If the Union has asserted for the first time in its response that the provision enforces an applicable law within the meaning of section 7106(a)(2), do you agree?

Yes No Union did not assert for the first time in its response

5a. If No, explain why and provide support for your explanation.

6. If the Union has asserted for the first time in its response that Agency rules or regulations relied upon in the Agency's statement of position violate applicable law, rule, regulation, the parties' collective-bargaining agreement, or appropriate authority outside the Agency, do you agree?

Yes No Union did not assert for the first time in its response

6a. If No, explain why and provide support for your explanation.

7. If the Union has asserted for the first time in its response that the Agency rules or regulations relied on by the Agency were not issued by the Agency or by any primary national subdivision of the Agency or otherwise are not applicable under 5 U.S.C. § 7117(a)(3), do you agree?

Yes No Union did not assert for the first time in its response

7a. If No, explain why and provide support for your explanation.

8. If the Union has asserted for the first time in its response that no compelling need exists for the Agency rules or regulations, do you agree?

Yes No Union did not assert for the first time in its response

8a. If No, explain why and provide support for your explanation.

9. Do you disagree with any other matters *raised for the first time* in the Union's response?

Yes No No other new matters raised

9a. If Yes, identify the matter and explain in detail your disagreement.

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 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.

10. If the Union has requested for the first time in its response that a provision be severed, do you oppose severance?

Yes No Union did not request severance for the first time in its response

10a. If Yes, explain why and provide support for your explanation.

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 an Agency reply 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 Reply to Union response on petition for review of negotiability issues.

STATEMENT OF SERVICE

I certify that a complete copy of the Agency's reply, including all attachments, in the case of the _____ and _____, case number _____, were filed with 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

*/ *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.