

FOR FLRA USE ONLY
Case No.:
Date Filed:

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.

Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of the Authority’s Regulations, 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.

The information requested below may be provided on this form or in a separately created document. The form is available over the Internet, 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:
- 1a. Case Caption:
2. 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. **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 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 for 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 _____

3. Do you disagree with any claim regarding the provision 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 that you already made in the petition for review.

4. 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.

5. 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?

6. 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.

7. 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.

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), 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 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 provision(s)?

Yes No

9a. If Yes, specify which provision(s) you wish to sever.

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. (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 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 _____ were filed with the Office of Case Intake and Publication, Federal Labor Relations Authority, Washington, D.C. by _____ [indicate method of service], and were sent this day to:

Agency Principal Bargaining Representative

(The Principal Bargaining Representative is the individual who signed the Agency allegation.)

Name:

Title:

Address:

Phone:

Method of Service: certified mail
 first-class mail
 commercial delivery (type: Fed Ex, UPS, etc.) _____
 personal delivery
 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: Fed Ex, UPS, etc.) _____
 personal delivery
 other (please specify) _____

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.