

## 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 THE 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 § 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](http://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:

### Part II – The Agency's Position

Set forth the Agency's position on any matters raised in the Union's response to the Agency's 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 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 responses on this form, then make a separate copy of questions 2 through 9 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 on in your argument or referenced in the provision. Attach to this reply 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** \_\_\_\_\_

2. If the Union has asserted for the first time in its response that the provision concerns a matter under 5 U.S.C. § 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 5 U.S.C. § 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 5 U.S.C. § 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 5 U.S.C. § 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(s) 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

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

## **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 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. (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 Agency's reply, 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:

## Union Principal Bargaining Representative

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 Agency's representative