

<b>FOR FLRA USE ONLY</b>
<b>Case No.:</b>
<b>Date Filed:</b>

## 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 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 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 Head contends that specific contract language is illegal. 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 provision; state any disagreement with the facts, arguments, or meaning of each provision 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 § 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 Agency Head 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](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.

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](http://www.flra.gov).

### Part I – Background

**1. Case Number:**

**1a. Case Caption:**

**2. Name and Address of Agency:**

Name:

Address:

**3. Agency Bargaining Representative Contact Information:**

Name:

Title:

Address (if different from Question 2):

Phone:

Fax:

Email:

4. Do you agree with the background information presented in the Union's answers to questions 1 through 7 in its petition for review?

Yes  No

4a. If No, explain and provide appropriate information in support 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 record of the post-petition conference?

Yes  No

5b. If No, explain and provide appropriate information in support of your explanation.

## Part II – The Agency's Position

6. Does the Agency wish to withdraw any allegation of illegality of any provision, in whole or part?

Yes  No Date Withdrawn \_\_\_\_\_

6b. If Yes, identify each relevant provision.

For each remaining provision, **answer questions 7 through 10**. 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 7 through 10 for each provision.**



## Part III – Legal Arguments

Set forth the Agency Head'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 legality claims made by the Union in the petition for review.

The Agency is responsible for raising and supporting arguments that each 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. Failure to participate in a post-petition conference under § 2424.23 of the Authority's Regulations, a direction or proceeding under § 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 rescission of an agency head disapproval under 5 U.S.C. § 7114(c). 5 C.F.R. § 2424.32.

In setting forth your arguments, answer questions 8 through 11. Provide legal arguments addressing each question to which you answer "Yes." **Use a separate copy of questions 8 through 11 for each provision.**

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 petition a copy of all such material, except for federal statutes, government-wide regulations, or judicial and administrative decisions.

If your entire 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** \_\_\_\_\_

8. Does the Agency assert that the provision is **contrary** to any of the following:

8a. 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 provision is contrary to that law, rule, or regulation.

8b. If the Agency asserts that the provision is inconsistent with an *Agency regulation*, is there a compelling need for the regulation pursuant to § 2424.11 of the Authority's Regulations? Explain why.

8c. A management right set out in 5 U.S.C. § 7106(a)?

Yes  No

If Yes, identify the management right and explain why the provision is contrary to that right.

9. If the Union has claimed that the provision is one of the following, and you disagree, explain why you disagree:

9a. A permissive subject of bargaining under 5 U.S.C. § 7106(b)(1).

9b. A procedure under 5 U.S.C. § 7106(b)(2).

9c. An appropriate arrangement under 5 U.S.C. § 7106(b)(3).

10. Are there any other grounds on which the Agency Head asserts the provision is illegal?

Yes     No

10a. If Yes, identify the ground(s) 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

If Yes, explain, with specificity, why severance is not appropriate.

## **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. (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 statement of position, 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