



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

FOR FLRA USE ONLY

Case No.

Date Filed

Complete instructions are on the back of this form.

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 section 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 Case Control Office at (202) 218-7740

1. Case Number and 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 report of the post-filing conference?

Yes

No

2b. If No, explain and provide appropriate information in support of your explanation.

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 a separate copy of this page for each provision that requires an explanation to those questions.

The Union is responsible for raising and supporting arguments that a provision is within the duty to bargain at the Agency's election or not contrary to law. Where the Union has asserted 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 relied in your argument or referenced in the provision. 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 25 pages long, you must include a table of contents and table of authorities.

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 10 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 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 **G**

No **G**

Answered in Petition for Review **G**

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 **G**

No **G**

Answered in Petition for Review **G**

7a. If Yes, explain why and provide support for your explanation. In your explanation, be sure to include the following:

- 1) Identify the management right the provision addresses.
- 2) Identify the employees who the Union asserts will be adversely affected by the exercise of that management right.
- 3) Describe what that adverse affect is and why it is adverse.
- 4) Describe what the impact is of the provision.
- 5) Describe all those employees that the arrangement will impact and explain how it will help.
- 6) Describe any employees who are not adversely affected by the exercise of management's right that the provision may impact.
- 7) Describe how the provision would interfere with management's rights.

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 assert 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 assert that such a need does not exist?

Yes

No

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

Severance

Severing a provision into separate parts makes each part the subject of a separate determination regarding its legality. 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 legal 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 you wish severed?

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

Statement/Certificate of Service to be used by Union in filing a response to 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 **UNION and AGENCY**, case number _____, were filed with the Case Control Office, 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

**/ For example, 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.*