



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.

## Statement of Agency Position on Petition For

# Review of Negotiability Issues Proposals

**USE THIS FORM ONLY FOR NEGOTIABILITY DISPUTES WHERE THE UNION HAS SUBMITTED A BARGAINING PROPOSAL TO THE AGENCY AND THE PARTIES HAVE NOT REACHED AGREEMENT ON THE PROPOSAL AND ITS NEGOTIABILITY.**

**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 contends that specific contract language is not negotiable. 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 proposal, state any disagreement with the facts, arguments or meaning of each proposal 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 section 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 head of the Agency 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 over the Internet, 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 Case Control Office 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 on the Internet at [www.flra.gov](http://www.flra.gov).

### 1. Case Number and Case Caption

### 2. Name and address of Agency:

### 3. Agency Representative Contact Information:

Name/Title:

Address (if different from Question 1):

Phone:

Fax:

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

Yes **G**

No **G**

**4a. If No, explain and provide appropriate information in support of your explanation.**

**5. Was a post-petition conference conducted in this case?**

Yes **G**

No **G**

**5a. If Yes, do you agree with the information contained in the report of the post-petition conference?**

Yes **G**

No **G**

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

**The Agency's Position**

**6. Does the Agency wish to withdraw any allegation of non-negotiability of any proposal, in whole or part?**

Yes **G**

No **G**

Date Withdrawn \_\_\_\_\_

**6b. If Yes, identify each relevant proposal.**

**For each remaining proposal, answer questions 7 through 10. Make a separate copy of this page for each proposal.**

PROPOSAL \_\_\_\_\_

**7. If the Agency's position is different from the Union's position in its petition for review on any of the following, explain, with support, the Agency's position:**

**7a. The meaning attributed to the proposal, including the Union's explanation of the meaning, terms of art, acronyms, technical language or any other aspect of the language of the proposal which is not in common usage.**

**7b. How the proposal would work and what impact it will have, including the Agency's basis for disagreeing with the Union's explanation.**

## Legal Arguments

Set forth the Agency's position on any matters relevant to the petition that it wishes the Authority to consider in reaching its decision, including a statement of the arguments and authorities supporting any bargaining obligation or negotiability claims made by the Union in the petition for review.

The Agency is responsible for raising and supporting arguments that each proposal is outside the duty to bargain or contrary to law. 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 section 2424.23 of the Authority's Regulations, a direction or proceeding under section 2424.31 or otherwise failure to provide timely or responsive information pursuant to an Authority Order may result in granting the petition for review and directing bargaining. 5 C.F.R. § 2424.32.

In setting forth your arguments, answer questions 8 through 11. Provide legal arguments addressing each question that you answer "Yes." Use a separate copy of this page for each proposal.

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 proposal. Attach to this petition 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 entire 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:

PROPOSAL \_\_\_\_\_

**8. Is there a bargaining obligation dispute, as defined at 5 C.F.R. § 2424.2(a), which the Agency asserts eliminates its obligation to bargain over the proposal?**

Yes  No

**8a. If Yes, list each dispute and describe your reasons for asserting that the Agency does not have a duty to bargain over the proposal, including the factual basis for the dispute and legal arguments. For each dispute, state whether you believe that there are factual questions that the Authority must resolve in order to resolve the dispute.**

**9. Does the Agency assert that the proposal is contrary to any of the following:**

**9a. 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 proposal is contrary to that law, rule or regulation.**

**9b. If the Agency asserts that the proposal is inconsistent with an Agency regulation, is there a compelling need for the regulation pursuant to section 2424.11 of the Authority's Regulations? Explain why.**

**9c. A management right set out in 5 U.S.C. § 7106(a)?**

Yes

No

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

**10. If the Union has claimed that the proposal is one of the following *and you disagree*, explain why you disagree:**

**10a. A permissive subject of bargaining under 5 U.S.C. § 7106(b)(1).**

**10b. A procedure under 5 U.S.C. § 7106(b)(2).**

**10c. An appropriate arrangement under 5 U.S.C. § 7106(b)(3).**

**11. Are there any other grounds on which the Agency asserts the proposal is not negotiable?**

Yes **G**

No **G**

**11a. If Yes, identify the ground and explain why.**

## Severance

*Severing a proposal 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    **G**                      No    **G**                      Not Requested    **G**

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

## Hearing

**13. Do you believe that a hearing or other fact finding procedure is necessary to resolve any issues presented in this case?**

Yes    **G**                                      No    **G**

**13a. If Yes, explain what those issue are and why they require a hearing.**





**Statement/Certificate of Service to be used by Agency filing a Statement of Position on petition for review of negotiability issues.**

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**STATEMENT OF SERVICE**

I certify that a complete copy of the statement of position, 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:

**Union Representative**

(Title and Mailing Address)

(The Principal Bargaining Representative is the individual who signed the petition for review.)

Indicate near each name the **Method of Service**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of filing party

\_\_\_\_\_  
Signature of Agency's Representative