

§ 2423.42 Backpay proceedings.

After the entry of an Authority order directing payment of backpay, or the entry of a court decree enforcing such order, if it appears to the Regional Director that a controversy exists between the Authority and a Respondent regarding backpay that cannot be resolved without a formal proceeding, the Regional Director may issue and serve on all parties a notice of hearing before an Administrative Law Judge to determine the backpay amount. The notice of hearing shall set forth the specific backpay issues to be resolved. The Respondent shall, within 20 days after the service of a notice of hearing, file an answer in accordance with § 2423.20. After the issuance of a notice of hearing, the procedures provided in subparts B, C, and D of this part shall be followed as applicable.

§§ 2423.43–2423.49 [Reserved]**PART 2424—NEGOTIABILITY PROCEEDINGS****Subpart A—Applicability of This Part and Definitions**

Sec.

2424.1 Applicability of this part.

2424.2 Definitions.

2424.3–2424.9 [Reserved]

Subpart B—Alternative Dispute Resolution; Requesting and Providing Allegations Concerning the Duty To Bargain

2424.10 Collaboration and Alternative Dispute Resolution Program.

2424.11 Requesting and providing written allegations concerning the duty to bargain.

2424.12–2424.19 [Reserved]

Subpart C—Filing and Responding to a Petition for Review; Conferences

2424.20 Who may file a petition for review.

2424.21 Time limits for filing a petition for review.

2424.22 Exclusive representative's petition for review; purpose; content; severance; service.

2424.23 Post-petition conferences; conduct and record.

2424.24 Agency's statement of position; purpose; time limits; content; severance; service.

2424.25 Response of the exclusive representative; purpose; time limits; content; severance; service.

2424.26 Agency's reply; purpose; time limits; content; service.

2424.27 Additional submissions to the Authority.

2424.28–2424.29 [Reserved]

Subpart D—Processing a Petition for Review

2424.30 Procedure through which the petition for review will be resolved.

2424.31 Resolution of disputed issues of material fact; hearings.

2424.32 Parties' responsibilities; failure to raise, support, and/or respond to arguments; failure to participate in conferences and/or respond to Authority orders.

2424.33–2424.39 [Reserved]

Subpart E—Decision and Order

2424.40 Authority decision and order.

2424.41 Compliance.

2424.42–2424.49 [Reserved]

Subpart F—Criteria for Determining Compelling Need for Agency Rules and Regulations

2424.50 Illustrative criteria.

2424.51–2424.59 [Reserved]

AUTHORITY: 5 U.S.C. 7134.

SOURCE: 63 FR 66413, Dec. 2, 1998, unless otherwise noted.

Subpart A—Applicability of This Part and Definitions**§ 2424.1 Applicability of this part.**

This part is applicable to all petitions for review filed after April 1, 1999.

§ 2424.2 Definitions.

In this part, the following definitions apply:

(a) *Bargaining obligation dispute* means a disagreement between an exclusive representative and an agency concerning whether, in the specific circumstances involved in a particular case, the parties are obligated to bargain over a proposal that otherwise may be negotiable. Examples of bargaining obligation disputes include disagreements between an exclusive representative and an agency concerning agency claims that:

(1) A proposal concerns a matter that is covered by a collective bargaining agreement; and

(2) Bargaining is not required over a change in bargaining unit employees' conditions of employment because the effect of the change is *de minimis*.

(b) *Collaboration and Alternative Dispute Resolution Program* refers to the Federal Labor Relations Authority's program that assists parties in reaching agreements to resolve disputes.

(c) *Negotiability dispute* means a disagreement between an exclusive representative and an agency concerning the legality of a proposal or provision. A negotiability dispute exists when an exclusive representative disagrees with an agency contention that (without regard to any bargaining obligation dispute) a proposal is outside the duty to bargain, including disagreement with an agency contention that a proposal is bargainable only at its election. A negotiability dispute also exists when an exclusive representative disagrees with an agency head's disapproval of a provision as contrary to law. A negotiability dispute may exist where there is no bargaining obligation dispute. Examples of negotiability disputes include disagreements between an exclusive representative and an agency concerning whether a proposal or provision:

(1) Affects a management right under 5 U.S.C. 7106(a);

(2) Constitutes a procedure or appropriate arrangement, within the meaning of 5 U.S.C. 7106(b)(2) and (3), respectively; and

(3) Is consistent with a Government-wide regulation.

(d) *Petition for review* means an appeal filed with the Authority by an exclusive representative requesting resolution of a negotiability dispute. An appeal that concerns only a bargaining obligation dispute may not be resolved under this part.

(e) *Proposal* means any matter offered for bargaining that has not been agreed to by the parties. If a petition for review concerns more than one proposal, then the term includes each proposal concerned.

(f) *Provision* means any matter that has been disapproved by the agency head on review pursuant to 5 U.S.C. 7114(c). If a petition for review concerns more than one provision, then the term includes each provision concerned.

(g) *Service* means the delivery of copies of documents filed with the Authority to the other party's principal bargaining representative and, in the case of an exclusive representative, also to the head of the agency. Compliance with part 2429 of this subchapter is required.

(h) *Severance* means the division of a proposal or provision into separate parts having independent meaning, for the purpose of determining whether any of the separate parts is within the duty to bargain or is contrary to law. In effect, severance results in the creation of separate proposals or provisions. Severance applies when some parts of the proposal or provision are determined to be outside the duty to bargain or contrary to law.

(i) *Written allegation concerning the duty to bargain* means an agency allegation that the duty to bargain in good faith does not extend to a proposal.

§§ 2424.3–2424.9 [Reserved]

Subpart B—Alternative Dispute Resolution; Requesting and Providing Allegations Concerning the Duty To Bargain

§ 2424.10 Collaboration and Alternative Dispute Resolution Program.

Where an exclusive representative and an agency are unable to resolve disputes that arise under this part, they may request assistance from the Collaboration and Alternative Dispute Resolution Program (CADR). Upon request, and as agreed upon by the parties, CADR representatives will attempt to assist the parties to resolve these disputes. Parties seeking information or assistance under this part may call or write the CADR Office at (202) 482-6503, 607 14th Street, NW., Washington, D.C. 20424-001. A brief summary of CADR activities is available on the Internet at www.flra.gov.

§ 2424.11 Requesting and providing written allegations concerning the duty to bargain.

(a) *General*. An exclusive representative may file a petition for review after receiving a written allegation concerning the duty to bargain from the agency. An exclusive representative