

§ 2424.23

(d) *Service.* The petition for review, including all attachments, must be served in accord with § 2424.2(g).

[63 FR 66413, Dec. 2, 1998, as amended at 74 FR 51745, Oct. 8, 2009]

§ 2424.23 Post-petition conferences; conduct and record.

(a) *Timing of post-petition conference.* On receipt of a petition for review involving a proposal or a provision, a representative of the FLRA will, where appropriate, schedule a post-petition conference to be conducted by telephone or in person. All reasonable efforts will be made to schedule and conduct the conference within ten (10) days after receipt of the petition for review.

(b) *Conduct of conference.* The post-petition conference will be conducted with representatives of the exclusive representative and the agency, who must be prepared and authorized to discuss, clarify and resolve matters including the following:

- (1) The meaning of the proposal or provision in dispute;
- (2) Any disputed factual issue(s);
- (3) Negotiability dispute objections and bargaining obligation claims regarding the proposal or provision;
- (4) Whether the proposal or provision is also involved in an unfair labor practice charge under part 2423 of this subchapter, in a grievance under the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter; and
- (5) Whether an extension of the time limits for filing the agency's statement of position and any subsequent filings is requested. The FLRA representative may, on determining that it will effectuate the purposes of the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101 *et seq.*, and this part, extend such time limits.

(c) *Record of the conference.* At the post-petition conference, or after it has been completed, the representative of the FLRA will prepare and serve on the parties a written statement that includes whether the parties agree on the meaning of the disputed proposal or provision, the resolution of any disputed factual issues, and any other appropriate matters.

5 CFR Ch. XIV (1-1-12 Edition)

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

(a) *Purpose.* The purpose of an agency statement of position is to inform the Authority and the exclusive representative why a proposal or provision is not within the duty to bargain or contrary to law, respectively. As more fully explained in paragraph (c) of this section, the agency is required in the statement of position to, among other things, set forth its understanding of the proposal or provision, state any disagreement with the facts, arguments, or meaning of the proposal or provision set forth in the exclusive representative's petition for review, and supply all arguments and authorities in support of its position.

(b) *Time limit for filing.* Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of this subchapter, the agency must file its statement of position within thirty (30) days after the date the head of the agency receives a copy of the petition for review.

(c) *Content.* The agency's statement of position must be on a form provided by the Authority for that purpose, or in a substantially similar format. It must be dated and must:

- (1) Withdraw either:
 - (i) The allegation that the duty to bargain in good faith does not extend to the exclusive representative's proposal, or
 - (ii) The disapproval of the provision under 5 U.S.C. 7114(c); or
- (2) Set forth in full 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, any disagreement with claims made by the exclusive representative in the petition for review, specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority relied on by the agency, and a copy of any such material that is not easily available to the Authority. The statement of position must also include the following:
 - (i) If different from the exclusive representative's position, an explanation

of the meaning the agency attributes to the proposal or provision and the reasons for disagreeing with the exclusive representative's explanation of meaning;

(ii) If different from the exclusive representative's position, an explanation of how the proposal or provision would work, and the reasons for disagreeing with the exclusive representative's explanation;

(3) A statement as to whether the proposal or provision is also involved in an unfair labor practice charge under part 2423 of this subchapter, a grievance pursuant to the parties' negotiated grievance procedure, or an impasse procedure under part 2470 of this subchapter, and whether any other petition for review has been filed concerning a proposal or provision arising from the same bargaining or the same agency head review; and

(4) Any request for a hearing before the Authority and the reasons supporting such request.

(d) *Severance.* If the exclusive representative has requested severance in the petition for review, and if the agency opposes the exclusive representative's request for severance, then the agency must explain with specificity why severance is not appropriate.

(e) *Service.* A copy of the agency's statement of position, including all attachments, must be served in accord with § 2424.2(g).

[63 FR 66413, Dec. 2, 1998, as amended at 74 FR 51745, Oct. 8, 2009]

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

(a) *Purpose.* The purpose of the exclusive representative's response is to inform the Authority and the agency why, despite the agency's arguments in its statement of position, the proposal or provision is within the duty to bargain or not contrary to law, respectively, and whether the union disagrees with any facts or arguments in the agency's statement of position. As more fully explained in paragraph (c) of this section, the exclusive representative is required in its response to, among other things, state why the proposal or provision does not conflict with any law, or why it falls within an

exception to management rights, including permissive subjects under 5 U.S.C. 7106(b)(1), and procedures and appropriate arrangements under section 7106(b) (2) and (3). Another purpose of the response is to permit the exclusive representative to request the Authority to sever portions of the proposal or provision and to explain why and how it can be done.

(b) *Time limit for filing.* Unless the time limit for filing has been extended pursuant to § 2424.23 or part 2429 of this subchapter, within fifteen (15) days after the date the exclusive representative receives a copy of an agency's statement of position, the exclusive representative must file a response.

(c) *Content.* The response must be on a form provided by the Authority for that purpose, or in a substantially similar format. With the exception of a request for severance pursuant to paragraph (d) of this section, the exclusive representative's response is specifically limited to the matters raised in the agency's statement of position. The response must be dated and must include the following:

(1) Any disagreement with the agency's bargaining obligation or negotiability claims. The exclusive representative must state the arguments and authorities supporting its opposition to any agency argument, and must include specific citation to any law, rule, regulation, section of a collective bargaining agreement, or other authority relied on by the exclusive representative, and provide a copy of any such material that is not easily available to the Authority. The exclusive representative is not required to repeat arguments made in the petition for review. If not included in the petition for review, the exclusive representative must state the arguments and authorities supporting any assertion that the proposal or provision does not affect a management right under 5 U.S.C. 7106(a), and any assertion that an exception to management rights applies, including:

(i) Whether and why the proposal or provision concerns a matter negotiable at the election of the agency under 5 U.S.C. 7106(b)(1);