

§ 2424.26

5 CFR Ch. XIV (1–1–01 Edition)

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);

(ii) Whether and why the proposal or provision constitutes a negotiable procedure as set forth in 5 U.S.C. 7106(b)(2);

(iii) Whether and why the proposal or provision constitutes an appropriate arrangement as set forth in 5 U.S.C. 7106(b)(3); and

(iv) Whether and why the proposal or provision enforces an “applicable law,” within the meaning of 5 U.S.C. 7106(a)(2).

(2) Any allegation that agency rules or regulations relied on in the agency’s statement of position violate applicable law, rule, regulation or appropriate authority outside the agency; that the rules or regulations were not issued by the agency or by any primary national subdivision of the agency, or otherwise are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3); or that no compelling need exists for the rules or regulations to bar negotiations.

(3) A table of contents and a table of legal authorities cited if the response to an agency statement of position exceeds 25 double-spaced pages in length.

(d) *Severance*. If not requested in the petition for review, or if the exclusive representative wishes to modify the request in the petition for review, the exclusive representative may request severance in its response. The exclusive representative must support its request with an explanation of how the severed portion(s) of the proposal or provision may stand alone, and how such severed portion(s) would operate. The exclusive representative also must respond to

any agency arguments regarding severance made in the agency’s statement of position. The explanation and argument in support of the severed portion(s) must meet the same requirements for specific information set forth in paragraph (c) of this section.

(e) *Service*. A copy of the response of the exclusive representative, including all attachments, must be served in accord with §2424.2(g).

§ 2424.26 Agency’s reply; purpose; time limits; content; service.

(a) *Purpose*. The purpose of the agency’s reply is to inform the Authority and the exclusive representative whether and why it disagrees with any facts or arguments made for the first time in the exclusive representative’s response. As more fully explained in paragraph (c) of this section, the Agency is required in the reply to, among other things, provide the reasons why the proposal or provision does not fit within any exceptions to management rights that were asserted by the exclusive representative in its response, and to explain why severance of the proposal or provision is not appropriate.

(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 agency receives a copy of the exclusive representative’s response to the agency’s statement of position, the agency may file a reply.

(c) *Content*. The reply must be on a form provided by the Authority for that purpose, or in a substantially similar format. The agency’s reply is specifically limited to the matters raised for the first time in the exclusive representative’s response. The agency’s reply must state the arguments and authorities supporting its reply, cite with specificity any law, rule, regulation, section of a collective bargaining agreement, or other authority relied on, and provide a copy of any material that is not easily available to the Authority. The agency is not required to repeat arguments made in its statement of position. The agency’s reply must be dated and must include the following:

(1) Any disagreement with the exclusive representative’s assertion that an

Federal Labor Relations Authority

§ 2424.30

exception to management rights applies, including:

(i) Whether and why the proposal or provision concerns a matter included in section 7106(b)(1) of the Federal Service Labor-Management Relations Statute;

(ii) Whether and why the proposal or provision does not constitute a negotiable procedure as set forth in section 7106(b)(2) of the Federal Service Labor-Management Relations Statute;

(iii) Whether and why the proposal or provision does not constitute an appropriate arrangement as set forth in section 7106(b)(3) of the Federal Service Labor-Management Relations Statute;

(iv) Whether and why the proposal or provision does not enforce an “applicable law,” within the meaning of section 7106(a)(2) of the Federal Service Labor-Management Relations Statute;

(2) Any arguments in reply to an exclusive representative’s allegation in its response that agency rules or regulations relied on in the agency’s statement of position violate applicable law, rule, regulation or appropriate authority outside the agency; that the rules or regulations were not issued by the agency or by any primary national subdivision of the agency, or otherwise are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3); or that no compelling need exists for the rules or regulations to bar negotiations; and

(3) A table of contents and a table of legal authorities cited, if the agency’s reply to an exclusive representative’s response exceeds 25 double-spaced pages in length.

(d) *Severance*. If the exclusive representative requests severance for the first time in its response, or if the request for severance in an exclusive representative’s response differs from the request in its 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 reply, including all attachments, must be served in accord with §2424.2(g).

§ 2424.27 Additional submissions to the Authority.

The Authority will not consider any submission filed by any party other than those authorized under this part, provided however that the Authority may, in its discretion, grant permission to file an additional submission based on a written request showing extraordinary circumstances by any party. The additional submission must be filed either with the written request or no later than five (5) days after receipt of the Authority’s order granting the request. Any opposition to the additional submission must be filed within fifteen (15) days after the date of the receipt of the additional submission. All documents filed under this section must be served in accord with §2424.2(g).

§§ 2424.28–2424.29 [Reserved]

Subpart D—Processing a Petition for Review

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

(a) *Exclusive representative has filed related unfair labor practice charge or grievance alleging an unfair labor practice*. Except for proposals or provisions that are the subject of an agency’s compelling need claim under 5 U.S.C. 7117(a)(2), where an exclusive representative files an unfair labor practice charge pursuant to part 2423 of this subchapter or a grievance alleging an unfair labor practice under the parties’ negotiated grievance procedure, and the charge or grievance concerns issues directly related to the petition for review filed pursuant to this part, the Authority will dismiss the petition for review. The dismissal will be without prejudice to the right of the exclusive representative to refile the petition for review after the unfair labor practice charge or grievance has been resolved administratively, including resolution pursuant to an arbitration award that has become final and binding. No later than thirty (30) days after the date on which the unfair labor practice charge or grievance is resolved administratively, the exclusive representative