

OPPOSITION TO EXCEPTIONS TO ARBITRATION AWARD

Important Information: Federal-sector parties who have participated in binding arbitration pursuant to 5 U.S.C. § 7121(b)(C)(iii) may use this form to file an opposition to arbitration exceptions that have been filed with the Federal Labor Relations Authority (the Authority). Only the officially designated representatives of an agency or union may file such an opposition; absent written authorization from a party to an arbitration proceeding, grievants or other non-parties may not file an opposition. *See* 5 C.F.R. § 2425.3.

The information requested below may be provided either on this form or in a separately created document. *See* 5 C.F.R. § 2425.5. The form is available at www.flra.gov. **Please note** that, if this form exceeds 10 double-spaced pages in length (excluding the statement of service) once you have filled it out, then you must include a table of contents with this form. *See* 5 C.F.R. § 2429.29. However, you may delete portions of the form that do not apply, such as portions discussing grounds for review that the excepting party has not raised.

If you have any questions about completing this form, or filing oppositions generally, then please contact the Authority's Office of Case Intake and Publication at (771) 444-5805.

Additional information about the time limits and procedural requirements for filing an opposition, as well as the arbitration process in general, can be found in 5 C.F.R. parts 2425 and 2429 and in the Guide to Arbitration at www.flra.gov.

Part I Background Information

1. Opposing party's information:

Name:

Position:

Name of Agency or Union:

Address:

Phone:

Fax:

E-mail address:

2. Excepting party's information:

Name:

Position:

Name of Agency or Union:

Address:

Phone:

Fax:

E-mail address:

3. Arbitrator's information:

Name:

Address:

Phone:

Fax, if available:

E-mail address, if available:

Part II Arguments

1. Do you disagree with any arguments made by the excepting party?

Yes No

1a. If yes, then identify the argument(s) with which you disagree, and answer questions 2 through 10.

2. Does the excepting party argue that the award is contrary to law or government-wide regulation, including management's rights under 5 U.S.C. § 7106?

Yes No

2a. If no, then skip to question 3; if yes, and you disagree with the excepting party, then answer questions 2b through 2d for laws and government-wide regulations other than 5 U.S.C. § 7106, and answer questions 2e through 2l for exceptions regarding 5 U.S.C. § 7106.

2b. *For laws and government-wide regulations other than 5 U.S.C. § 7106:* Explain why the law is not contrary to the cited law(s) or government-wide regulations(s).

2c. Are you contending that the contrary-to-law arguments could have been, but were not, raised before the arbitrator?

Yes No

2d. If yes, then please explain how they reasonably could have been raised before the arbitrator:

2e. *For exceptions regarding management right(s) set out in 5 U.S.C. § 7106: Do you claim that the award does not affect the asserted right(s)?*

Yes No

2f. If yes, then please explain:

2g. If the cited management right(s) is set out in 5 U.S.C. § 7106(a)(2), then do you claim that the arbitrator was enforcing an applicable law within the meaning of 5 U.S.C. § 7106(a)(2)?

Yes No

2h. If yes, then please identify the applicable law, explain why it is an applicable law, and explain how the award enforces that law:

2i. If the cited management right(s) set out in either 5 U.S.C. § 7106(a)(1) or (a)(2), do you claim that the arbitrator was enforcing a contract provision negotiated pursuant to 5 U.S.C. § 7106(b)?

Yes No

2j. If yes, then please identify and quote the contract provision(s) enforced by the arbitrator and explain why they constitute provisions negotiated pursuant to 5 U.S.C. § 7106(b):

2k. Are you contending that the management's-rights argument(s) could have been, but were not, raised before the arbitrator?

Yes No

2l. If yes, then please explain how they reasonably could have been raised before the arbitrator:

3. Does the excepting party argue that the award is contrary to an agency-wide regulation?

Yes No

3a. If no, then skip to question 4; if yes, and you disagree, then answer questions 3b through 3e:

- 3b. Do you claim that the arbitrator was enforcing a contract provision that addresses the same subject matter as the agency-wide regulation?
- Yes No
- 3c. If yes, then identify and quote the contract provision and explain how it addresses the same subject matter as the agency-wide regulation:
- 3d. Are you contending that the argument(s) regarding agency regulations could have been, but were not, raised before the arbitrator?
- Yes No
- 3e. If yes, then explain how they reasonably could have been raised before the arbitrator:
4. Does the excepting party argue that the award is incomplete, ambiguous, or contradictory?
- Yes No
- 4a. If no, then skip to question 5; if yes, and you disagree, then please answer questions 4b through 4d:
- 4b. Explain why the meaning and effect of the award is not so unclear as to make implementation of the award impossible:
- 4c. Are you contending that the “incomplete, ambiguous, or contradictory” exception(s) could have been, but were not, raised before the arbitrator?
- Yes No
- 4d. If yes, then explain how they reasonably could have been raised before the arbitrator:
5. Does the excepting party argue that the arbitrator was biased?
- Yes No
- 5a. If no, then skip to question 6; if yes, and you disagree, then please answer questions 5b through 5d:
- 5b. Explain why the award was not procured by improper means, why there was not partiality or corruption on the part of the arbitrator, and/or why the arbitrator did not engage in misconduct that prejudiced the rights of the excepting party:

5c. Are you contending that the bias argument(s) could have been, but were not, raised before the arbitrator?

Yes No

5d. If yes, then explain how they reasonably could have been raised before the arbitrator:

6. Does the excepting party argue that the award is contrary to public policy?

Yes No

6a. If no, then skip to question 7; if yes, and you disagree, then please answer questions 6b through 6d:

6b. Explain why the alleged public policy does not have its source in laws and legal precedents, and/or why the award does not violate the alleged public policy:

6c. Are you contending that the public-policy argument(s) could have been, but were not, raised before the arbitrator?

Yes No

6d. If yes, then explain how they reasonably could have been raised before the arbitrator:

7. Does the excepting party argue that the arbitrator denied it a fair hearing?

Yes No

7a. If no, then skip to question 8; if yes, and you disagree, then please answer questions 7b through 7d.

7b. Explain why the arbitrator did not refuse to hear or consider pertinent or material evidence, or how other actions in conducting the proceeding did not so prejudice the excepting party that it affected the fairness of the proceedings as a whole:

7c. Are you contending that the fair-hearing argument(s) could have been, but were not, raised before the arbitrator?

Yes No

7d. If yes, then explain how they reasonably could have been raised before the arbitrator:

8. Does the excepting party argue that the award is based on a nonfact?

Yes No

- 8a. If no, then skip to question 9; if yes, and you disagree, then answer questions 8b through 8f.
- 8b. Did the parties dispute before the arbitrator the factual issue that is alleged to be a nonfact?
- Yes No
- 8c. If no, then skip to question 8d; if yes, then please provide supporting citations to the award and/or the record to demonstrate that the matter was disputed, and attach any supporting evidence to this form:
- 8d. Please explain why a central fact underlying the award is not clearly erroneous, and/or why, even if it were clearly erroneous, the arbitrator would have reached the same conclusion that (s)he reached:
- 8e. Are you contending that the nonfact argument(s) could have been, but were not, raised before the arbitrator?
- Yes No
- 8f. If yes, then please explain how they reasonably could have been raised before the arbitrator:
9. Does the excepting party argue that the award fails to draw its essence from the parties' collective bargaining agreement?
- Yes No
- 9a. If no, then skip to question 10; if yes, and you disagree, then please answer questions 9b through 9d.
- 9b. Explain why the arbitrator's interpretation of the agreement is not irrational, unfounded, implausible, or in manifest disregard of the agreement:
- 9c. Are you contending that the essence argument(s) could have been, but were not, raised before the arbitrator?
- Yes No
- 9d. If yes, then explain how they reasonably could have been raised before the arbitrator:
10. Does the excepting party argue that the arbitrator exceeded his or her authority?
- Yes No

- 10a. If no, then skip to question 11; if yes, and you disagree, then please answer questions 10b through 10d.
- 10b. Depending on which “exceeded authority” grounds were raised, explain why the arbitrator: did not fail to resolve an issue that was submitted to arbitration; did not resolve an issue that was not submitted to arbitration; did not disregard specific limitations on his or her authority; and/or did not award relief to individuals who were not encompassed within the grievance:
- 10c. Are you contending that the “exceeded authority” argument(s) could have been, but were not, raised before the arbitrator?
- Yes No
- 10d. If yes, then explain how they reasonably could have been raised before the arbitrator:

Part III Request for Expedited, Abbreviated Decision

1. Has the excepting party requested an expedited, abbreviated decision under 5 C.F.R. § 2425.7?
- Yes No
2. If yes, then please state whether you support or oppose the request, and why you support or oppose it:

Part IV Additional Information

Please set forth any additional relevant information or arguments here, but *note that arguments that the award is deficient should be set forth in timely filed exceptions, not set forth here.*

Part V Checklist with Statement of Service and Signature

All oppositions and attached documents filed with the Authority must comply with the requirements set forth in parts 2425 and 2429 of the Authority's Regulations.

A complete copy (including all attachments) of oppositions must:

- Be served by certified mail, first-class mail, commercial delivery, in person, or by email (but only if the opposing party has agreed to email service) on all counsel of record or other designated representative(s) of parties, upon parties not so represented, and upon any interested person who has been granted permission by the Authority to present written and/or oral argument as amicus curiae; service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. 5 C.F.R. § 2429.27(a), (b).
- Contain a signed and dated statement of service with the names and addresses of parties served, date of service, the nature of document served, and the manner in which service was made. 5 C.F.R. § 2429.27(c).
- Contain an original or clean copy of all documents, which are capable of reproduction. 5 C.F.R. § 2429.25.
- Include a table of contents if the opposition exceeds 10 double-spaced pages in length. 5 C.F.R. § 2429.29.
- Be addressed to:
Case Intake and Publication
Federal Labor Relations Authority
Docket Room, Suite 300
1400 K Street, NW
Washington, D.C. 20424-0001

For questions about filing requirements, contact the above office at (771) 444-5805 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday (except Federal holidays).

Statement of Service for filing an Opposition to Exceptions to an Arbitration Award

STATEMENT OF SERVICE

I certify that a complete copy of the [Agency's/Union's] Opposition, including all attachments, were filed with the Office of Case Intake and Publication, Federal Labor Relations Authority, Washington, D.C., by [indicate whether by certified mail, first class mail, commercial delivery (indicate whether Fed Ex, UPS, etc.), or personal delivery], and were sent this day to the following by the method indicated:

Name:

Title:

Mailing Address:

City, State, Zip Code:

Phone Number:

Method of service (check): certified mail
 first class mail
 commercial delivery _____ (indicate whether Fed Ex, UPS, etc.)
 personal delivery
 email (but only when the receiving party has agreed to service by email under 5 C.F.R. § 2429.27(b)(6))
 other (please specify) _____

Name:

Title:

Mailing Address:

City, State, Zip Code:

Phone Number:

Method of service (check): U.S. certified mail
 U.S. first class mail
 commercial delivery _____ (indicate whether Fed Ex, UPS, etc.)
 personal delivery
 email (but only when the receiving party has agreed to service by email under 5 C.F.R. § 2429.27(b)(6))
 other (please specify) _____

_____ **Date**

_____ **Name of Representative/Title**

_____ **Signature of Representative**

