

### § 2424.31

(1) The exclusive representative withdraws the grievance;

(2) The parties mutually resolve the grievance;

(3) An arbitrator has issued an award resolving the grievance, and the 30-day period under 5 U.S.C. 7122(b) has passed without an exception being filed; or

(4) An arbitrator has issued an award resolving the grievance, a party has filed an exception to that award, and the Authority has issued a decision resolving that exception.

(b) *Exclusive representative has not filed related unfair labor practice charge or grievance alleging an unfair labor practice.* The petition will be processed as follows:

(1) *No bargaining obligation dispute exists.* The Authority will resolve the petition for review under the procedures of this part.

(2) *A bargaining obligation dispute exists.* The exclusive representative may have an opportunity to file an unfair labor practice charge pursuant to part 2423 of this subchapter or a grievance under the parties' negotiated grievance procedure concerning the bargaining obligation dispute, and, where the exclusive representative pursues either of these courses, the Authority will proceed in accord with paragraph (a) of this section. If the exclusive representative does not file an unfair labor practice charge or grievance concerning the bargaining obligation dispute, then the Authority will proceed to resolve all disputes necessary for disposition of the petition unless, in its discretion, the Authority determines that resolving all disputes is not appropriate because, for example, resolution of the bargaining obligation dispute under this part would unduly delay resolution of the negotiability dispute, or the procedures in another, available administrative forum are better suited to resolve the bargaining obligation dispute.

[88 FR 62458, Sept. 12, 2023]

### § 2424.31 Hearings and other appropriate action.

When necessary to resolve disputed issues of material fact in a negotiability or bargaining obligation dispute, or when it would otherwise aid in decision making, the Authority, or its des-

### 5 CFR Ch. XIV (1–1–25 Edition)

ignated representative, may, in its discretion:

(a) Direct the parties to provide specific documentary evidence;

(b) Direct the parties to provide answers to specific factual questions;

(c) Refer the matter to a hearing pursuant to 5 U.S.C. 7117(b)(3) or (c)(5); or

(d) Take any other appropriate action.

[63 FR 66413, Dec. 2, 1998, as amended at 88 FR 62459, Sept. 12, 2023; 88 FR 69873, Oct. 10, 2023]

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

(a) *Responsibilities of the exclusive representative.* The exclusive representative has the burden of explaining the meaning, operation, and effects of the proposal or provision; and raising and supporting arguments that the proposal or provision is within the duty to bargain, within the duty to bargain at the agency's election, or not contrary to law, respectively.

(b) *Responsibilities of the agency.* The agency has the burden of explaining the agency's understanding of the meaning, operation, and effects of the proposal or provision, if the agency disagrees with the exclusive representative's explanations; and raising and supporting arguments that the proposal or provision is outside the duty to bargain or contrary to law, respectively.

(c) *Responsibilities to sufficiently explain.* Each party has the burden to give sufficiently detailed explanations to enable the Authority to understand the party's position regarding the meaning, operation, and effects of a proposal or provision. A party's failure to provide such explanations may affect the Authority's decision in a manner that is adverse to the party.

(d) *Failure to raise, support, or respond to arguments.*

(1) Failure to raise and support an argument may, in the Authority's discretion, be deemed a waiver of such argument. Absent good cause:

(i) Arguments that could have been but were not raised by an exclusive

## Federal Labor Relations Authority

## § 2424.41

representative in the petition for review, or made in its response to the agency's statement of position, may not be made in this or any other proceeding; and

(ii) Arguments that could have been but were not raised by an agency in the statement of position, or made in its reply to the exclusive representative's response, may not be raised in this or any other proceeding.

(2) Failure to respond to an argument or assertion raised by the other party may, in the Authority's discretion, be treated as conceding such argument or assertion.

(e) *Failure to participate in conferences; failure to respond to Authority orders.* Where a party fails to participate in a post-petition conference pursuant to § 2424.23, a direction or proceeding under § 2424.31, or otherwise fails to provide timely or responsive information pursuant to an Authority order, including an Authority procedural order directing the correction of technical deficiencies in filing, the Authority may, in addition to those actions set forth in paragraph (d) of this section, take any other action that, in the Authority's discretion, it deems appropriate, including dismissal of the petition for review (with or without prejudice to the exclusive representative's refiling of the petition for review), and granting the petition for review and directing bargaining or rescission of an agency head disapproval under 5 U.S.C. 7114(c) (with or without conditions).

[88 FR 62459, Sept. 12, 2023; 88 FR 69873, Oct. 10, 2023]

### §§ 2424.33–2424.39 [Reserved]

## Subpart E—Decision and Order

### § 2424.40 Authority decision and order.

(a) *Issuance.* Subject to the requirements of this part, the Authority will expedite proceedings under this part to the extent practicable and will issue to the exclusive representative and to the agency a written decision, explaining the specific reasons for the decision, at the earliest practicable date. The decision will include an order, as provided in paragraphs (b) and (c) of this section, but, with the exception of an order to bargain, such order will not

include remedies that could be obtained in an unfair labor practice proceeding under 5 U.S.C. 7118(a)(7).

(b) *Cases involving proposals.* If the Authority finds that the duty to bargain extends to the proposal, then the Authority will order the agency to bargain concerning the proposal. If the Authority finds that the duty to bargain does not extend to the proposal, then the Authority will dismiss the petition for review as to that proposal. If the Authority finds that the proposal is bargainable only at the election of the agency, then the Authority will so state. If the Authority resolves a negotiability dispute by finding that a proposal is within the duty to bargain, but there are unresolved bargaining obligation dispute claims, then the Authority will order the agency to bargain in the event its bargaining obligation claims are resolved in a manner that requires bargaining.

(c) *Cases involving provisions.* If the Authority finds that a provision is not contrary to law, rule, or regulation, or is bargainable at the election of the agency, then the Authority will direct the agency to rescind its disapproval of such provision in whole or in part as appropriate. If the Authority finds that a provision is contrary to law, rule, or regulation, then the Authority will dismiss the petition for review as to that provision.

[63 FR 66413, Dec. 2, 1998, as amended at 88 FR 62459, Sept. 12, 2023; 88 FR 69873, Oct. 10, 2023]

### § 2424.41 Compliance.

The exclusive representative may report to the appropriate Regional Director an agency's failure to comply with an order issued in accordance with § 2424.40. The exclusive representative must report such failure within a reasonable period of time following expiration of the 60-day period under 5 U.S.C. 7123(a), which begins on the date of issuance of the Authority order. If, on referral from the Regional Director, the Authority finds such a failure to comply with its order, the Authority will take whatever action it deems necessary to secure compliance with its

**§§ 2424.42–2424.49**

order, including enforcement under 5 U.S.C. 7123(b).

[88 FR 62460, Sept. 12, 2023]

**§§ 2424.42–2424.49 [Reserved]**

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

**§ 2424.50 Illustrative criteria.**

A compelling need exists for an agency rule or regulation concerning any condition of employment when the rule or regulation was issued by the agency or any primary national subdivision of the agency, and the agency demonstrates that the rule or regulation satisfies one of the following illustrative criteria:

(a) The rule or regulation is essential, as distinguished from helpful or desirable, to the accomplishment of the mission or the execution of functions of the agency or primary national subdivision in a manner that is consistent with the requirements of an effective and efficient government.

(b) The rule or regulation is necessary to ensure the maintenance of basic merit principles.

(c) The rule or regulation implements a mandate to the agency or primary national subdivision under law or other outside authority, which implementation is essentially nondiscretionary in nature.

[63 FR 66413, Dec. 2, 1998, as amended at 88 FR 62460, Sept. 12, 2023]

**§§ 2424.51–2424.59 [Reserved]**

**PART 2425—REVIEW OF ARBITRATION AWARDS**

Sec.

2425.1 Applicability of this part.

2425.2 Exceptions—who may file; time limits for filing, including determining date of service of arbitration award for the purpose of calculating time limits; procedural and other requirements for filing.

2425.3 Oppositions—who may file; time limits for filing; procedural and other requirements for filing.

2425.4 Content and format of exceptions.

2425.5 Content and format of opposition.

**5 CFR Ch. XIV (1–1–25 Edition)**

2425.6 Grounds for review; potential dismissal or denial for failure to raise or support grounds.

2425.7 Requests for expedited, abbreviated decisions in certain arbitration matters that do not involve unfair labor practices.

2425.8 Collaboration and Alternative Dispute Resolution Program.

2425.9 Means of clarifying records or disputes.

2425.10 Authority decision.

AUTHORITY: 5 U.S.C. 7134.

SOURCE: 75 FR 42290, July 21, 2010, unless otherwise noted.

**§ 2425.1 Applicability of this part.**

This part applies to all arbitration cases in which exceptions are filed with the Authority, pursuant to 5 U.S.C. 7122, on or after June 4, 2012.

[77 FR 26434, May 4, 2012]

**§ 2425.2 Exceptions—who may file; time limits for filing, including determining date of service of arbitration award for the purpose of calculating time limits; procedural and other requirements for filing.**

(a) *Who may file.* Either party to arbitration under the provisions of chapter 71 of title 5 of the United States Code may file an exception to an arbitrator's award rendered pursuant to the arbitration.

(b) *Timeliness requirements—general.* The time limit for filing an exception to an arbitration award is thirty (30) days after the date of service of the award. This thirty (30)-day time limit may not be extended or waived. In computing the thirty (30)-day period, the first day counted is the day after, not the day of, service of the arbitration award. Example: If an award is served on May 1, then May 2 is counted as day 1, and May 31 is day 30; an exception filed on May 31 would be timely, and an exception filed on June 1 would be untimely. In order to determine the date of service of the award, see the rules set forth in subsection (c) of this section, and for additional rules regarding computing the filing date, see 5 CFR 2429.21 and 2429.22.

(c) *Methods of service of arbitration award; determining date of service of arbitration award for purposes of calculating time limits for exceptions.* If the parties have reached an agreement as to what

is an appropriate method(s) of service of the arbitration award, then that agreement—whether expressed in a collective bargaining agreement or otherwise—is controlling for purposes of calculating the time limit for filing exceptions. If the parties have not reached such an agreement, then the arbitrator may use any commonly used method—including, but not limited to, electronic mail (hereinafter “e-mail”), facsimile transmission (hereinafter “fax”), regular mail, commercial delivery, or personal delivery—and the arbitrator’s selected method is controlling for purposes of calculating the time limit for filing exceptions. The following rules apply to determine the date of service for purposes of calculating the time limits for filing exceptions, and assume that the method(s) of service discussed are either consistent with the parties’ agreement or chosen by the arbitrator absent such an agreement:

(1) If the award is served by regular mail, then the date of service is the postmark date or, if there is no legible postmark, then the date of the award; for awards served by regular mail, the excepting party will receive an additional five days for filing the exceptions under 5 CFR 2429.22.

(2) If the award is served by commercial delivery, then the date of service is the date on which the award was deposited with the commercial delivery service or, if that date is not indicated, then the date of the award; for awards served by commercial delivery, the excepting party will receive an additional five days for filing the exceptions under 5 CFR 2429.22.

(3) If the award is served by e-mail or fax, then the date of service is the date of transmission, and the excepting party will not receive an additional five days for filing the exceptions.

(4) If the award is served by personal delivery, then the date of personal delivery is the date of service, and the excepting party will not receive an additional five days for filing the exceptions.

(5) If the award is served by more than one method, then the first method of service is controlling when determining the date of service for purposes of calculating the time limits for filing

exceptions. However, if the award is served by e-mail, fax, or personal delivery on one day, and by mail or commercial delivery on the same day, the excepting party will not receive an additional five days for filing the exceptions, even if the award was postmarked or deposited with the commercial delivery service before the e-mail or fax was transmitted.

(d) *Procedural and other requirements for filing.* Exceptions must comply with the requirements set forth in 5 CFR 2429.24 (Place and method of filing; acknowledgment), 2429.25 (Number of copies and paper size), 2429.27 (Service; statement of service), and 2429.29 (Content of filings).

**§ 2425.3 Oppositions—who may file; time limits for filing; procedural and other requirements for filing.**

(a) *Who may file.* A party to arbitration under the provisions of chapter 71 of title 5 of the United States Code may file an opposition to an exception that has been filed under § 2425.2 of this part.

(b) *Timeliness requirements.* Any opposition must be filed within thirty (30) days after the date the exception is served on the opposing party. For additional rules regarding computing the filing date, see 5 CFR 2425.8, 2429.21 and 2429.22.

(c) *Procedural requirements.* Oppositions must comply with the requirements set forth in 5 CFR 2429.24 (Place and method of filing; acknowledgment), 2429.25 (Number of copies and paper size), 2429.27 (Service; statement of service), and 2429.29 (Content of filings).

**§ 2425.4 Content and format of exceptions.**

(a) *What is required.* You must date your exception, unless you file it electronically through use of the eFiling system on the FLRA’s Web site at *www.flra.gov*. Regardless of how you file your exception, you must ensure that it is self-contained and that it sets forth, in full, the following:

(1) A statement of the grounds on which review is requested, as discussed in § 2425.6 of this part;

## § 2425.5

(2) Arguments in support of the stated grounds, including specific references to the record, citations of authorities, and any other relevant documentation;

(3) Legible copies of any documents (which you may upload as attachments if you file electronically through use of the FLRA's eFiling system) that you reference in the arguments discussed in paragraph (a)(2) of this section, and that the Authority cannot easily access (such as internal agency regulations or provisions of collective bargaining agreements);

(4) Arguments in support of any request for an expedited, abbreviated decision within the meaning of §2425.7 of this part;

(5) A legible copy of the award of the arbitrator; and

(6) The arbitrator's name, mailing address, and, if available and authorized for use by the arbitrator, the arbitrator's e-mail address or facsimile number.

(b) *What is not required.* Exceptions are not required to include copies of documents that are readily accessible to the Authority, such as Authority decisions, decisions of Federal courts, current provisions of the United States Code, and current provisions of the Code of Federal Regulations.

(c) *What is prohibited.* Consistent with 5 CFR 2429.5, an exception may not rely on any evidence, factual assertions, arguments (including affirmative defenses), requested remedies, or challenges to an awarded remedy that could have been, but were not, presented to the arbitrator.

(d) *Format.* You may file your exception on an optional form that is available on the FLRA's Web site at *www.flra.gov*, or in any other format that is consistent with paragraphs (a) and (c) of this section. You meet this requirement if you file your exception electronically through use of the FLRA's eFiling system on that Web site. Your failure to use, or properly fill out, an Authority-provided form will not, by itself, provide a basis for dismissing your exception.

[75 FR 42290, July 21, 2010, as amended at 77 FR 26434, May 4, 2012]

## 5 CFR Ch. XIV (1–1–25 Edition)

### § 2425.5 Content and format of opposition.

If you choose to file an opposition, then you may file your opposition on an optional form that is available on the FLRA's Web site at *www.flra.gov*, or in any other format that is consistent with this section. You meet this requirement if you file your opposition electronically through use of the FLRA's eFiling system on that Web site. Your failure to use, or properly fill out, an Authority-provided form will not, by itself, provide a basis for dismissing your opposition. If you choose to file an opposition, and you dispute any assertions that have been made in the exceptions, then you should address those assertions—including any assertions that any evidence, factual assertions, arguments (including affirmative defenses), requested remedies, or challenges to an awarded remedy were raised before the arbitrator. If the excepting party has requested an expedited, abbreviated decision under §2425.7 of this part, then you should state whether you support or oppose such a decision and provide supporting arguments. You must provide copies of any documents upon which you rely (which you may upload as attachments if you file your opposition electronically through use of the FLRA's eFiling system), unless the Authority can easily access those documents (as discussed in §2425.4(b) of this part) or the excepting party provided them with its exceptions.

[77 FR 26435, May 4, 2012]

### § 2425.6 Grounds for review; potential dismissal or denial for failure to raise or support grounds.

(a) The Authority will review an arbitrator's award to which an exception has been filed to determine whether the award is deficient—

(1) Because it is contrary to any law, rule or regulation; or

(2) On other grounds similar to those applied by Federal courts in private sector labor-management relations.

(b) If a party argues that an award is deficient on private-sector grounds under paragraph (a)(2) of this section, then the excepting party must explain how, under standards set forth in the