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(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]

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§ 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

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decisional law of the Authority or Federal courts:

- (1) The arbitrator:
 - (i) Exceeded his or her authority; or
 - (ii) Was biased; or
 - (iii) Denied the excepting party a fair hearing; or
- (2) The award:
 - (i) Fails to draw its essence from the parties' collective bargaining agreement; or
 - (ii) Is based on a nonfact; or
 - (iii) Is incomplete, ambiguous, or contradictory as to make implementation of the award impossible; or
 - (iv) Is contrary to public policy; or
 - (v) Is deficient on the basis of a private-sector ground not listed in paragraphs (b)(1)(i) through (b)(2)(iv) of this section.
- (c) If a party argues that the award is deficient on a private-sector ground raised under paragraph (b)(2)(v) of this section, the party must provide sufficient citation to legal authority that establishes the grounds upon which the party filed its exceptions.
- (d) The Authority does not have jurisdiction over an award relating to:
 - (1) An action based on unacceptable performance covered under 5 U.S.C. 4303;
 - (2) A removal, suspension for more than fourteen (14) days, reduction in grade, reduction in pay, or furlough of thirty (30) days or less covered under 5 U.S.C. 7512; or
 - (3) Matters similar to those covered under 5 U.S.C. 4303 and 5 U.S.C. 7512 which arise under other personnel systems.
- (e) An exception may be subject to dismissal or denial if:
 - (1) The excepting party fails to raise and support a ground as required in paragraphs (a) through (c) of this section, or otherwise fails to demonstrate a legally recognized basis for setting aside the award; or
 - (2) The exception concerns an award described in paragraph (d) of this section.

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

Where an arbitration matter before the Authority does not involve allegations of unfair labor practices under 5

U.S.C. 7116, and the excepting party wishes to receive an expedited Authority decision, the excepting party may request that the Authority issue a decision that resolves the parties' arguments without a full explanation of the background, arbitration award, parties' arguments, and analysis of those arguments. In determining whether such an abbreviated decision is appropriate, the Authority will consider all of the circumstances of the case, including, but not limited to: whether any opposition filed under § 2425.3 of this part objects to issuance of such a decision and, if so, the reasons for such an objection; and the case's complexity, potential for precedential value, and similarity to other, fully detailed decisions involving the same or similar issues. Even absent a request, the Authority may issue expedited, abbreviated decisions in appropriate cases.

§ 2425.8 Collaboration and Alternative Dispute Resolution Program.

The parties may request assistance from the Collaboration and Alternative Dispute Resolution Program (CADR) to attempt to resolve the dispute before or after an opposition is filed. Upon request, and as agreed to by the parties, CADR representatives will attempt to assist the parties to resolve these disputes. If the parties have agreed to CADR assistance, and the time for filing an opposition has not expired, then the Authority will toll the time limit for filing an opposition until the CADR process is completed. Parties seeking information or assistance under this part may call or write the CADR Office at 1400 K Street, NW., Washington, DC 20424. A brief summary of CADR activities is available on the Internet at <http://www.flra.gov>.

§ 2425.9 Means of clarifying records or disputes.

When required to clarify a record or when it would otherwise aid in disposition of the matter, the Authority, or its designated representative, may, as appropriate:

- (a) Direct the parties to provide specific documentary evidence, including the arbitration record as discussed in 5 CFR 2429.3;

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(b) Direct the parties to respond to requests for further information;

(c) Meet with parties, either in person or via telephone or other electronic communications systems, to attempt to clarify the dispute or matters in the record;

(d) Direct the parties to provide oral argument; or

(e) Take any other appropriate action.

§ 2425.10 Authority decision.

The Authority shall issue its decision and order taking such action and making such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

PART 2426—NATIONAL CONSULTATION RIGHTS AND CONSULTATION RIGHTS ON GOVERNMENT-WIDE RULES OR REGULATIONS

Subpart A—National Consultation Rights

Sec.

2426.1 Requesting; granting; criteria.

2426.2 Requests; petition and procedures for determination of eligibility for national consultation rights.

2426.3 Obligation to consult.

Subpart B—Consultation Rights on Government-wide Rules or Regulations

2426.11 Requesting; granting; criteria.

2426.12 Requests; petition and procedures for determination of eligibility for consultation rights on Government-wide rules or regulations.

2426.13 Obligation to consult.

AUTHORITY: 5 U.S.C. 7134.

SOURCE: 45 FR 3513, Jan. 17, 1980, unless otherwise noted.

Subpart A—National Consultation Rights

§ 2426.1 Requesting; granting; criteria.

(a) An agency shall accord national consultation rights to a labor organization that:

(1) Requests national consultation rights at the agency level; and

(2) Holds exclusive recognition for either:

(i) Ten percent (10%) or more of the total number of civilian personnel em-

ployed by the agency and the non-appropriated fund Federal instrumentalities under its jurisdiction, excluding foreign nationals; or

(ii) 3,500 or more employees of the agency.

(b) An agency's primary national subdivision which has authority to formulate conditions of employment shall accord national consultation rights to a labor organization that:

(1) Requests national consultation rights at the primary national subdivision level; and

(2) Holds exclusive recognition for either:

(i) Ten percent (10%) or more of the total number of civilian personnel employed by the primary national subdivision and the non-appropriated fund Federal instrumentalities under its jurisdiction, excluding foreign nationals; or

(ii) 3,500 or more employees of the primary national subdivision.

(c) In determining whether a labor organization meets the requirements as prescribed in paragraphs (a)(2) and (b)(2) of this section, the following will not be counted:

(1) At the agency level, employees represented by the labor organization under national exclusive recognition granted at the agency level.

(2) At the primary national subdivision level, employees represented by the labor organization under national exclusive recognition granted at the agency level or at that primary national subdivision level.

(d) An agency or a primary national subdivision of an agency shall not grant national consultation rights to any labor organization that does not meet the criteria prescribed in paragraphs (a), (b) and (c) of this section.

§ 2426.2 Requests; petition and procedures for determination of eligibility for national consultation rights.

(a) Requests by labor organizations for national consultation rights shall be submitted in writing to the headquarters of the agency or the agency's primary national subdivision, as appropriate, which headquarters shall have fifteen (15) days from the date of service of such request to respond thereto in writing.

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(b) Issues relating to a labor organization's eligibility for, or continuation of, national consultation rights shall be referred to the Authority for determination as follows:

(1) A petition for determination of the eligibility of a labor organization for national consultation rights under criteria set forth in §2426.1 may be filed by a labor organization.

(2) A petition for determination of eligibility for national consultation rights shall be submitted on a form prescribed by the Authority and shall set forth the following information:

(i) Name and affiliation, if any, of the petitioner and its address and telephone number;

(ii) A statement that the petitioner has submitted to the agency or the primary national subdivision and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;

(iii) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of such person's knowledge and belief;

(iv) The signature of the petitioner's representative, including such person's title and telephone number;

(v) The name, address, and telephone number of the agency or primary national subdivision in which the petitioner seeks to obtain or retain national consultation rights, and the persons to contact and their titles, if known;

(vi) A showing that petitioner holds adequate exclusive recognition as required by §2426.1; and

(vii) A statement as appropriate: (A) That such showing has been made to and rejected by the agency or primary national subdivision, together with a statement of the reasons for rejection, if any, offered by that agency or primary national subdivision;

(B) That the agency or primary national subdivision has served notice of its intent to terminate existing national consultation rights, together with a statement of the reasons for termination; or

(C) That the agency or primary national subdivision has failed to respond

in writing to a request for national consultation rights made under §2426.2(a) within fifteen (15) days after the date the request is served on the agency or primary national subdivision.

(3) The following regulations govern petitions filed under this section:

(i) A petition for determination of eligibility for national consultation rights shall be filed with the Regional Director for the region wherein the headquarters of the agency or the agency's primary national subdivision is located.

(ii) An original and four (4) copies of a petition shall be filed, together with a statement of any other relevant facts and of all correspondence.

(iii) Copies of the petition together with the attachments referred to in paragraph (b)(3)(ii) of this section shall be served by the petitioner on all known interested parties, and a written statement of such service shall be filed with the Regional Director.

(iv) A petition shall be filed within thirty (30) days after the service of written notice by the agency or primary national subdivision of its refusal to accord national consultation rights pursuant to a request under §2426.2(a) or its intention to terminate existing national consultation rights. If an agency or a primary national subdivision fails to respond in writing to a request for national consultation rights made under §2426.2(a) within fifteen (15) days after the date the request is served on the agency or primary national subdivision, a petition shall be filed within thirty (30) days after the expiration of such fifteen (15) day period.

(v) If an agency or primary national subdivision wishes to terminate national consultation rights, notice of its intention to do so shall include a statement of its reasons and shall be served not less than thirty (30) days prior to the intended termination date. A labor organization, after receiving such notice, may file a petition within the time period prescribed herein, and thereby cause to be stayed further action by the agency or primary national subdivision pending disposition of the petition. If no petition has been filed within the provided time period, an

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agency or primary national subdivision may terminate national consultation rights.

(vi) Within fifteen (15) days after the receipt of a copy of the petition, the agency or primary national subdivision shall file a response thereto with the Regional Director raising any matter which is relevant to the petition.

(vii) The Regional Director shall make such investigations as the Regional Director deems necessary and thereafter shall issue and serve on the parties a Decision and Order with respect to the eligibility for national consultation rights which shall be final: *Provided, however,* That an application for review of the Regional Director's Decision and Order may be filed with the Authority in accordance with the procedure set forth in §2422.17 of this subchapter. A determination by the Regional Director to issue a notice of hearing shall not be subject to the filing of an application for review. The Regional Director, if appropriate, may cause a notice of hearing to be issued to all interested parties where substantial factual issues exist warranting a hearing. Hearings shall be conducted by a Hearing Officer in accordance with §§2422.9 through 2422.15 of this subchapter and after the close of the hearing a Decision and Order shall be issued by the Regional Director in accordance with §2422.16 of this subchapter.

[45 FR 3513, Jan. 17, 1980, as amended at 48 FR 40193, Sept. 6, 1983]

§ 2426.3 Obligation to consult.

(a) When a labor organization has been accorded national consultation rights, the agency or the primary national subdivision which has granted those rights shall, through appropriate officials, furnish designated representatives of the labor organization:

(1) Reasonable notice of any proposed substantive change in conditions of employment; and

(2) Reasonable time to present its views and recommendations regarding the change.

(b) If a labor organization presents any views or recommendations regarding any proposed substantive change in conditions of employment to an agency or a primary national subdivision, that

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agency or primary national subdivision shall:

(1) Consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(2) Provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this subpart shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

Subpart B—Consultation Rights on Government-wide Rules or Regulations

§ 2426.11 Requesting; granting; criteria.

(a) An agency shall accord consultation rights on Government-wide rules or regulations to a labor organization that:

(1) Requests consultation rights on Government-wide rules or regulations from an agency; and

(2) Holds exclusive recognition for 3,500 or more employees.

(b) An agency shall not grant consultation rights on Government-wide rules or regulations to any labor organization that does not meet the criteria prescribed in paragraph (a) of this section.

§ 2426.12 Requests; petition and procedures for determination of eligibility for consultation rights on Government-wide rules or regulations.

(a) Requests by labor organizations for consultation rights on Government-wide rules or regulations shall be submitted in writing to the headquarters of the agency, which headquarters shall have fifteen (15) days from the date of service of such request to respond thereto in writing.

(b) Issues relating to a labor organization's eligibility for, or continuation of, consultation rights on Government-wide rules or regulations shall be referred to the Authority for determination as follows:

(1) A petition for determination of the eligibility of a labor organization for consultation rights under criteria