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N.A.A.E.

National Association of Agriculture Employees

NEWSLETTER

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National Association of Agriculture Employees
Newsletter Issue No. 61 September 2000

A Message From Our President

Mike Randall

Greetings,

Sorry it has taken so long to put this Newsletter together. My initial "welcoming" on my watch as President was, despite my past experience on the Executive Committee, a little unexpected, nothing less than a bombardment of issues requiring immediate action.

We as a Committee have had enormous loads placed upon our shoulders as we spiral down a worsening labor relations abyss.

I delayed writing this article hoping that there would be some improvement or some news that would brighten this page, but the only thing that I found was the certainty that this news and the report would continually change before it would make it to print.

Every Union official once elected hopes (or should hope) that he/she can come into office to do something positive, improve working conditions, make work a pleasant and rewarding experience, and help fellow employees achieve their goals. The current hostile climate between labor and management,(as "helped along" by an APHIS restructuring of labor relations that PPQ did not ask for—more later) leaves little time for these ideals. Instead, what I see is that these goals and ideals must go by the wayside. We must activate the Fire Department to put out some of the worst fires I've seen in my 12 years on the Committee. The very existence of the bargaining unit—the PPQ Officer and Technician-- is on the line.

Downgrades

The number one issue is the downgrade— as you know, Management (or should I say APHIS Administrator Craig Reed) proposed the downgrade of 477 GS-11 Master Journeyman positions on April 28, 2000. We will fight this vigorously. NAAE has submitted proposals to mitigate the action by a number of modes including a proposal for Management to wait, as promised, for any reclassification mandated by an Office of Personnel Management rewrite of the entire 400 series to be completed. Proposals have also been submitted to seek an independent classification evaluation. Even if we do not prevail in the first battles, we will continue to fight this issue until

all avenues of redress are exhausted. Most of the factual material handed out in the past about the mechanisms and procedure of downgrades is fairly accurate as the NAAE was involved in part of the development of the Q & As; however, some procedures remain to be negotiated. Management's reasoning in effecting this downgrade, particularly its timing, is suspect and faulty as I shall editorialize next newsletter if necessary(or should you call me by phone).

We have had a substance and I&I proposal exchange with Management; however, negotiations are not moving. Management has yet to satisfactorily fulfill our 5 USC 7114 (b)(4) information request, and we will file ULP charges if we are not satisfied.

[Note: Often we tend to use the term "Management" in the generic, but we don't always mean it generically. NAAE realizes that there are those managers who supported the Employee Utilization efforts, the GS-11 journeyman upgrade efforts, and a myriad of other workplace re-design initiatives aimed at making PPQ a decent place to work. We are indebted to those managers ?and there are many of them-- who had the foresight to see a different path for the Agency. Unfortunately there are those managers now that have a new, counterproductive agenda of divisiveness. NAAE knows who these people are. When the term "Management" is used by NAAE collectively, and it appears to have a negative connotation, please bear in mind that we are not referring to the good managers.]

Cruise Ship Policy

Precisely when USA Today, CNN, GAO and the OIG are questioning whether we can do a better job of inspecting cruise ships (among other things ? USDA OIG at: http://www.usda.gov/oig/auditrpt/Fullrpt.pdf), PPQ in its infinite wisdom decides the best inspection is no inspection. I saw a compliance agreement drawn for the purpose of replacing real PPQ employees with stand-up cardboard cut outs. One of the responsibilities of the cruise ship line (besides having only US origin stores—which is a good idea) is to inform all of the passengers that that anyone bringing fruit off of the ship will be fined by a PPQ Officer (who as a consequence of this misguided policy, is no longer present to fine anyone.)

Supposedly, this Management decision is based on Agriculture Quarantine Inspection Monitoring (AQIM) data. NAAE has been consistently critical of the methodology, formulae and assumptions made in the collection and evaluation of the data. (These are some of the problems: a mathematical problem in hundreds of variables can not be boiled down to a formula in just a few variables, seasonality is rarely considered, the scientific method is ignored, the data gathering methods skew the data.) Our criticisms have constantly been met with the Agency's selective hearing that deactivates whenever the audio is unwanted.

National Negotiations Pending- Please contact your Regional Vice President should your local Management move to implement locally.

Antilles School

The Agency has set down its policy to cease certifying PPQ employee-dependents for attendance at the Department of Defense school in San Juan, Puerto Rico (a English speaking school in

Puerto Rico that provides total English education for Department of Defense and many other U.S. Government Agency Employee-dependents) beginning in the FY 2001 school year. Management through its new APHIS Labor Relations Chief has attempted to circumvent the bargaining process despite a signed agreement settling a 1997 ULP that should govern the situation.

NAAE will begin complaint actions should Management fail to come to the negotiating table. To this point, APHIS has failed to explain its motivation for this non-certification action by electing to ignore our 5 USC 7114 (b) (4) information request.

Unpaid Meal Break Issue

Negotiations are occurring nationwide on proposals regarding Dr. Dunkle's insistence on imposing an unpaid meal break (NAAE fully understands that this forced implementation is DESPITE the objections of many local managers who truly understand the parameters of our working environment.) In some cases these negotiations are a test of our National Interim Generic Groundrules. I participated in local negotiations recently and I am puzzled at Management's inability to recognize the centerpiece issue. Management and the Union AGREED in our National Collective Bargaining Agreement ?the Red Book Contract—that APHIS Directive 402.1 shall determine exemptions permitting tours of duty without lunch under certain conditions. Management agreed to follow its own rules. Nothing has changed since the exemptions were granted by Management at many ports circa 1985 and 1990. Why suddenly now the change? This issue is negotiable as far as the need to follow the contract and the rules go, and is not, as Management insists, "totally non-negotiable." Of course, the Union's I&I proposals are negotiable, too.

NAAE is looking into instances where local managers have been instructed to repudiate the National or local groundrules by implementing before negotiations have been brought to conclusion through the Impasses Panel. We will file ULPs and grievances in appropriate circumstances to receive backpay for overtime. Please consult your Regional Vice President should you receive a notice requiring implementation of the lunch. NAAE needs to know of all instances where managers have implemented without required negotiations. We can also help you fine-tune your counter-proposals.

Rampant Reports of Yet Another Reorganization

In addition to the announced changes to make current Smuggling Interdiction and Trade Compliance (SITC) activities independent of established AQI field operations, we have heard reports of a new move to split domestic programs out of PPQ. We understand that this is only in the talking stages at the APHIS level. NAAE believes that this may play a part of the APHIS divide-and-conquer strategy Management appears to be employing. NAAE is resolved to remain intact and viable as a bargaining unit, and we will do what is necessary to continue to represent our membership—PPQ officers, technicians, new off-shoots or whatever created positions come along. This will include inviting the new Smuggling Interdiction and Trade Compliance positions , once filled with incumbents, and any new APHIS units to take the steps to include themselves in our bargaining unit.

We think someone may have figured 56 SITC positions were too small a unit to have a union. Well, someone, you are wrong.
General deterioration of Labor Relations

APHIS has extracted all Labor Relations functions out from PPQ and placed these functions in APHIS including National Contract negotiations. Most of our written dialogue with APHIS has been conducted with new people, mostly former Department of Defense employees and staff, who do not understand our culture, how PPQ works or the history and substance of our labor-management relationship. It is increasingly frustrating dealing with the Branch Chief of this staff which is not part of our PPQ family (even as unhappy as it has been sometimes). Much time and resource are wasted when NAAE is effectively forbidden to interact with our own managers. NAAE is taking steps at mitigating some of the effects of this misguided policy by inisting on free exercise of our rights and will litigate some of Management's actions if necessary.

It Doesn't Have To be This Way

Prior to this current labor relations regime, PPQ-NAAE labor-management ties were strengthening. We had implemented an ambitious program to provide joint labor-management training nationwide. We had our negotiations differences too. Despite NAAE's initial resistance to National Groundrules for local negotiations, we have warmed to the idea. They currently are in effect. These are among some of the successes that are in danger of being crushed by the current APHIS-LR gamesmanship. A clear example of the damper is the recent slowdown to a trickle at the National Contract Negotiations in contrast to the successes and relative quickening of the agreement pace of earlier in the year, before this APHIS cloud appeared.

Perhaps the changes mentioned above do not directly affect you. NAAE is a group effort for all positions and aspects of our bargaining unit. Be mindful that some change will come to your job, and you need to be involved in addressing the changes coming in your area of interest. Not all change is bad. Some changes are good. Some changes will happen. My words do not have to be discouragement for you. The fact is that changes can be made in humane ways with a minimum of impact and disruption. Regrettably, this has not always been the course the Agency has chosen. NAAE will redouble its efforts to help make the Agency see the light to the more pleasant pathway. We will, however, remain vigilant on our defenses, on your defenses.

PPQ: it's your last opportunity to come back!

New Events In PPQ

New National Officers

NAAE welcomes John Keck of Los Angeles as the new Western Region Vice President (the first new one in 12 years...guess it was time for a change) and Bill Johnson of Chicago as 2nd Vice President (the first technician on the Executive Committee in 12 years). Orland Correa of Miami has moved over to Southeast Region Vice President. Congratulations to all.

Cola Settlement

Have you worked in Hawaii, Puerto Rico, U.S. Virgin Islands, Alaska, or Guam during 1990-2000? You may be owed a tidy federal tax-free sum courtesy of the U.S. Office of Personnel Management.

OPM screwed up in the calculations of non-foreign area cost of living allowance calculations for some or all of the years. It is expected the first pay-outs will be made in 2001. The settlements of five class-action suits have resulted in creation of a fund of over $200 million for payments to the parties. These payments also will be made to deceased employee's estates. There will be paperwork that must be filled out to certify your claim. These documents are not available yet.

For more information :
Http://www.colasettlement.com

Need Your Home Address

In order to comply with Department of Labor requirements we absolutely must have your home address for correspondence. It is a violation of law for us to send an elections ballot to the office address. We are sure that you would like us to comply with the law. If your Newsletter is coming to the office, please let us know about your correct address at address@infested.net or by a note to this Newsletter.

Let's Call On Congress

You can make a difference.

NAAE needs to increase regular congressional contact if we are to succeed in turning back some of the bad initiatives to come. We need to know who your congressperson is so that we might use your unique geography either to write that letter that changes our national situation or perhaps to go down with you to his/her offices (a visit from me or a trip for you) to bring our issue directly to Congress.

E-mail your name address and congressperson's name to GoToCongress@infested.net

Mike

Grievances

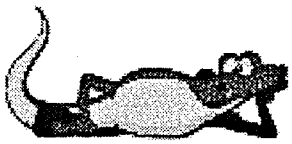
When grievances are forwarded to the Deputy Level, the National Union is often unaware of the text of the grievance itself. We receive only the national answer to the grievance from Management in its cryptic response. It is ESSENTIAL that you provide the national Union all of the documentation for your grievance in order that we as an Executive Committee may make an informed decision as to whether to proceed to arbitration or not. Often the information is provided last minute or not at all. NAAE must make critical decisions on the best expenditures of funds for the benefit of the bargaining unit. Your failure to provide

A Look Back At The Convention

Editorial

Eileen Thrift

I attended the NAAE National Convention held in Tampa, Florida April 9-13. My reasons for attending were several. I wanted to meet the members of the Executive Committee as well as Local Union Officers. I thought it would be a great opportunity to learn from the NAAE sponsored Labor Management Relations (LMR) training, which I had heard was excellent. I also thought it would be a good idea to find out what the Union was doing both at the national and local level at other locations, apart from what is in the newsletter or on the web site.



I felt that I have met and exceeded my goals. There were issues discussed that affect my port and many that did not. I was interested in all of them.

I learned that our Union Officers (both local and national) are working hard to protect us from detrimental unilateral decisions made by Management. I feel fortunate that I do not work at a port where local management and labor have a poor relationship. I heard firsthand accounts of locals under fire from managers and supervisors who make bad decisions. These decisions, unfortunately, may have national impact. I hope everyone is familiar with these issues.

One comment I heard from some on the Executive Committee is they often do not hear from the people they represent. They want feedback, good or bad.

I would like to say that all is wonderful and good with NAAE but there is something that does bother me. It is that there are many bargaining unit employees that enjoy all the rights and privileges of union representation without paying for it. It is my opinion that this is like collecting a paycheck without working for it. It is wrong. Everyone knows money is power. We have so much to be gained by becoming members and paying our dues.

In closing, I'd like to say we have some very special, hardworking, dedicated people representing us in NAAE. It was a pleasure to finally meet many of you at the National Convention.

Eileen Thrift
NAAE Member at Large
Cape Canaveral, Florida

NAAE your documentation may result in your grievance being dropped.

Please mail all documentation to your Regional Vice President at THE SAME TIME you forward the grievance to the Regional Level. Additionally, please do not hesitate to call your Regional Vice President BEFORE filing your grievance.

Welcome Mission Texas

NAAE extends a hearty HOWDY to our new branch #55 at the Moorefield Mission Labs in Mission, Texas. Congratulations to the new Branch President and a welcome to all of the new members there that decided NAAE is the way to go.

Al Elder Retires

NAAE extends our best wishes to retiring Eastern Region Director Al Elder. Mr. Elder has always been a friend to NAAE and as Deputy Administrator has led us through difficult times. We wish him a long healthy retirement and want him to know that he will be greatly missed.

New Uniforms

NAAE has been hearing that there are numerous problems with and concerns about the new uniform contract. Less than desirable material, questionable shipping tactics and practices, rumors of possible child-labor concerns are many issues that have been brought to us. We know you are just "bursting at the seams" to tell us. NAAE requests that you e-mail your dissatisfaction to the Uniform Committee care of Keith Miller at Keith.G.Miller@Usda.gov and cc: to NAAE at Uniforms@infested.net . We will publish a list of some of the more poignant examples on the web site.

Sounds Like a Personal Problem to Me!

A pregnant PPQ Officer at an undisclosed location on the southern border requested a medical accommodation requiring her to be away from X-ray machines and toxic pollutants/exposures/pesticides etc. Management's answer to this accommodation was to present the employee with a catalogue in order that she may select an appropriate heavy lead apron to wear to aid her in working around the X-ray and walking the traffic lanes in 100 degree plus weather. Needless to say we are at odds with management. We believe that someone in management thinks that they will be able fulfill this accommodation in about ten months!

This is not a joke!, it's real PPQ.

GENERAL COUNSEL'S CORNER – By Kim Mann

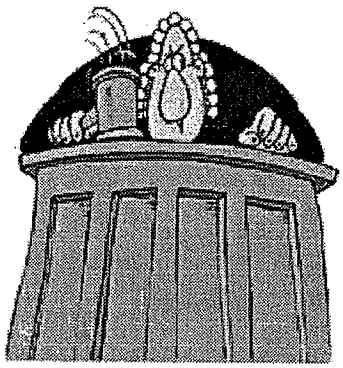
I. <u>The 125 Temporary Promotion/Backpay Grievances, A Status Report</u>

The Agency continues to exhibit a disturbing and increasing lack of good faith in dealing with the 125 pending grievances seeking retroactive temporary promotions to the GS-11 grade and back pay. First, the Agency won't budge from its refusal to make good on its prior commitment to settle the 21 small-port grievances, part of the 125, even though both the Agency and the Union had agreed those 21 were similar to the so-called

"Chicago Seven" grievants. Second, the Agency's representative recently announced to Arbitrator Professor Bernhardt, selected to hear the 125 grievances, that the Agency was no longer willing even to entertain settlement proposals from the Union to resolve those 21 grievances. This Agency position, if it continues, will result in a tremendous waste of financial resources of the Agency and U.S. taxpayers, as well as the Union.

The Agency's position on settlement is, moreover, difficult to rationalize in light of a recent decision from Arbitrator Bernhardt, issued March 10, 2000. Following the August 1999 Cleveland arbitration hearings, he ruled that four grievant PPQ Officers (part of the 125) had performed GS-11 work while serving as GS-9s in small ports and, like the "Chicago Seven," are entitled to retroactive temporary promotions and back pay. Arbitrator Bernhardt's ruling became necessary when the Agency would not agree with the Union that these four grievants were also similarly situated to the "Chicago Seven."

Arbitrator Bernhardt's decision, awarding the "Cleveland Four" full retroactive temporary promotions and back pay, is not yet final. On April 17, 2000, the Agency challenged Arbitrator Bernhardt's "Cleveland Four" award, filing written exceptions with FLRA seeking to reverse this decision. The Union filed a motion with FLRA requesting FLRA to reject the Agency's written exceptions because they were filed five days late. The Union also submitted its written reply in opposition to the merits of the Agency's exceptions in the event FLRA elects to accept and consider them.



Arbitrator Bernhardt's decision in the "Cleveland Four" case concludes with the following message to the Agency, a warning that, in my opinion, underscores the need for the Agency to reexamine its current settlement posture:

> A word to the wise. Two arbitrators, Arbitrator Wolff [in the Chicago Seven case] and myself, have now ruled that the purpose of Article XIX, Section 4 [of the Collective Bargaining Agreement] is to enable the Agency to save money by operating with less supervision over its professionals. We have further found that this ability to operate with less supervision [at small ports] is the distinction between GS-9 and GS-11. The Agency would be wise to settle any cases where they themselves are convinced that these criteria have been met.

The Agency readily concedes the 21 pending small-port grievances represent situations similar to the "Chicago Seven" and now the "Cleveland Four." Yet, it adamantly refuses to settle or even discuss their settlement. Despite the Agency's troubling stance regarding settling the 21 pending "small-port" grievances, the Union remains open to discussing their settlement along the lines of the "Chicago Seven" awards and to executing a written binding agreement implementing those settlement terms.

On March 30, 2000, the Agency and the Union completed the second phase of arbitration hearings, the Miami phase, in the 125 pending grievance cases. Arbitrator Professor Bernhardt,

the same arbitrator who heard the "Cleveland Four" phase, also presided over the Miami hearings. During the four weeks of hearings, the Union presented testimony of 29 Miami-based grievants and nine supporting witnesses who could confirm the testimony of the grievants. The Agency sponsored the testimony of 10 witnesses who disputed the Union's case.

Unlike the "Chicago Seven" and the "Cleveland Four," the Miami phase deals with grievants who as GS-9 PPQ Officers work at a large port, Miami, performing essentially the same duties as other GS-11s with whom they work side by side at that port. While they may have theoretical supervision nearby, that supervision is often infrequent or unavailable at all.

It is too early to predict whether Arbitrator Professor Bernhardt will rule in favor of the Union and the 29 Miami grievants as he did for the four grievants in the "Cleveland Four" phase. Arbitrator Bernhardt did make it clear during the course of the Miami hearings he would reject one of the Agency's principal theories on which its opposition to the Miami grievances is based. He refused to treat as relevant the Agency's two-pronged argument and evidence that the GS-11 position description "SJ 8227" is misclassified as a GS-11 position because it allegedly violates OPM classification standards and that, under proper OPM classification standards, the work the GS-11s perform at Miami pursuant to their SJ 8227 position descriptions is no more than GS-9 work. The Agency also pursues a second theory in opposing the Miami grievances. It contends the work the grievants perform at Miami does not amount to GS-11 work even when evaluated against the Agency's GS-11 position description, SJ 8227. The Union believes this second argument represents the real issue in the case and the primary issue the Arbitrator will address in his decision on the 29 Miami grievances.

The Union and the Agency will file separate written "briefs" with Arbitrator Bernhardt by the first part of July, summarizing the facts and presenting legal argument. The briefs will assist the Arbitrator in determining the positions of the parties and in deciding the legal and factual issues in dispute. No decision from the Arbitrator on the Miami phase is expected until late this summer or early this fall.

After the Arbitrator issues his decision in the Miami phase, the parties will be ready to litigate the balance of the 125 grievances, probably with future arbitration hearings to be held in San Juan, PR and Elizabeth, NJ.

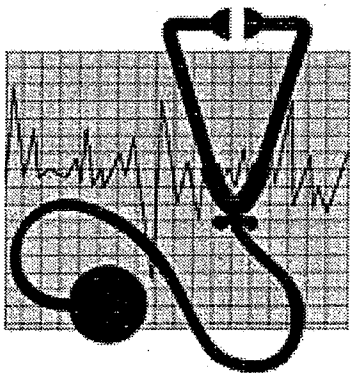
If the Agency continues to reject settling or even discussing settlement of the 21 small-port grievances that are similarly situated to the "Chicago Seven," the Union will have no alternative but to request Arbitrator Bernhardt to schedule another set of arbitration hearings just for them. The Union will have to bring those 21 grievants into a central location to present their live testimony before the Arbitrator. Of course, the Union remains hopeful this step will not be necessary.

II. Medical Accommodations, A Dilemma for Union and Management Alike

Consider this fact pattern: a PPQ Officer, "Mr. R," has been diagnosed with a bad back and sleep apnea and can not perform the required work on the night shift, one of the three shifts at the port; pursuant to the port's local MOU, all bargaining unit employees at the port rotate through

the three different shifts on a weekly basis; one shift, the night shift, also requires substantial bending and lifting; Mr. R's doctor provides local Management a written report, describing Mr. R's medical condition and advising that Mr. R should not be assigned duties requiring night work or repetitive bending and lifting. Far fetched? I don't think so.

A variation of the above scenario surfaces frequently throughout the Agency. It poses very difficult policy questions for everyone involved. The law plays an important role as well. What is local Management's obligation under these circumstances? What about the local Union as representative of the entire local bargaining unit? Congressional statutes, such as the Rehabilitation Act of 1973, 29 U.S.C. §§701 et seq., formulate the national public policy on the subject: to provide equal opportunity in employment to those with handicaps. This national policy requires federal agencies to provide reasonable accommodations to those with handicaps or disabilities in order to provide them employment or continued employment unless to do so would impose an undue hardship on the Agency's operations. But what happens when Management's selected reasonable accommodation, possibly the only accommodation that will enable the employee to continue to work for the Agency, conflicts with a long-standing past practice or MOU affecting the entire local bargaining unit?



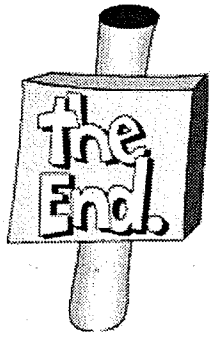
The FLRA recently addressed this very issue in U.S. Department of Veterans Affairs , Medical and Regional Center, Togus, Maine and American Federation of Government Employees, Local 2610, 55 FLRA No. 192 ("USDVA "). The fact pattern in USDVA is the one described above involving our "Mr. R." In order to accommodate Mr. R pursuant to the Rehabilitation Act, management in USDVA unilaterally changed his shift, assigning him a permanent, non-rotating day shift. The local union objected. It filed a grievance on behalf of the other employees who now had more evening shifts with heavier work to perform as a direct result of the accommodation.

The FLRA ruled in USDVA that the Rehabilitation Act does not supersede or take precedence over the provisions of the local union-management agreement requiring equitable distribution of shift rotations for all bargaining unit employees. According to FLRA, "the well-settled rule under the Rehabilitation Act is that an agency is not required to accommodate an employee's handicap by violating the rights of other employees under a collective bargaining agreement." The FLRA approved the arbitrator's award, sustaining the union's grievance and ordering the agency to restore the employees to their established shift rotation schedules. In effect, local management was left to find another method of accommodating Mr. R without interfering with a past practice and the local MOU on shift rotations.

Did the agency do the right thing by attempting to accommodate Mr. R, and if so, did it do the right thing by accommodating Mr. R without first notifying the local union of its intention to change a past practice and giving the union the opportunity to negotiate the change? Obviously, FLRA in USDVA did not think so. Did the local union do the right thing by filing a grievance, the effect of which could well be to prevent the agency from providing Mr. R any reasonable accommodation? Could local management and the union mutually have arrived at some other

reasonable accommodation, one that, when implemented, would allow Mr. R to continue to work at the port without interfering with the established shift rotations? These are very difficult questions for which no clear-cut answers may exist. Clearly, however, all parties involved could and probably should have acted more reasonably, with greater concern and compassion for each other's rights and for resolving the real-world dilemma this touchy issue posed.

USDVA addressed a handicap accommodation under the Rehabilitation Act. Would the FLRA decision have been different had the need for an accommodation arisen because of a temporary medical condition? Suppose Mr. R, instead of a bad back and sleep apnea, had a healable broken leg? There is some reason to believe the arbitrator and FLRA in USDVA would have treated the need for only a temporary accommodation, and thus for only a temporary interruption of the shift rotation, differently.



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(Your Input & Feedback Is Most Welcome)

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PLEASE NOTIFY THE NATIONAL SECRETARY OF AN ADDRESS CHANGE!

This Newsletter is distributed to NAAE members & to members of the House and Senate Agriculture Committees

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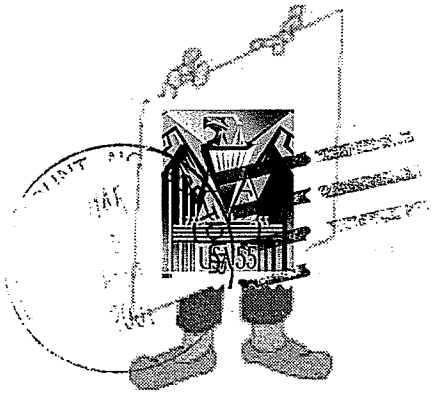

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