

N.A.A.E.

National Association of Agriculture Employees

NEWSLETTER



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National Association of Agriculture Employees

Newsletter Issue No. 69 December 2004



A Message From Our President

Mike Randall

“When you come to a fork in the road, take it!”

--- Yogi Berra

NAAE is at “a fork in the road.” And for the CBP folks, we must take it. Rather than to beat around the bush or detract from the discussion, I urge you to proceed on, read the articles in this issue, and understand what the events that are unfolding mean for all of us. For the last three years we have lived under a regime of bulletins and “breaking news.” The future will be no different. This issue truly contains “breaking news.” It makes us heavy in the heart.

For the PPQ folks, be glad that much of this is not about you. We will have our “turn.” A small bird told me the new “mandate driven” Administration has a few tricks up its sleeve waiting for us. One of these is called “Pay for Performance.” More details as they arrive.

Without further adieu, let us peruse this tome in the spirit of its creation.

Gentlefolks, Be seated!

"If you don't know where you are going, you might wind up someplace else." --- Yogi BerraRight, again!

Where to--? For Our CBP Folks? The Process and the DECISION

CBP has made it clear that, going forward, it is only willing to deal with one union. In order to do so, CBP has filed a petition with FLRA requesting that all of CBP (except Border Patrol) be recognized as a single appropriate unit for representational purposes. In an effort to satisfy this single-union CBP objective, AFGE and NTEU have joined together to form a two-union coalition in order to jointly represent all of CBP, except Border Patrol. The matter is now in the hands of FLRA, the federal agency charged with deciding unit representational issues.

At the NAAE Convention in June, the CBP delegates to the Convention unanimously voted to have NAAE intervene in the FLRA proceeding to fight the CBP petition and its single-union objective because it would necessarily exclude NAAE from representing Legacy Agriculture and force the Agriculture Specialists and Technicians into the NTEU or AFGE bargaining units, probably split between the two. NAAE Convention attendees unanimously agreed that NAAE should argue to FLRA that all of Legacy Agriculture (the Agriculture Specialists and Technicians) should constitute a separate appropriate unit within CBP and continue to be represented by NAAE. To carry out this strategy, NAAE then launched "Plan A," filing its own petition with FLRA, requesting it be consolidated with the CBP petition. The NAAE petition requests FLRA to recognize NAAE as the exclusive representative of the Ag Specialists and Technicians within CBP, regardless of what union ends up representing the Legacy Customs and Immigration employees, the new "CBP Officers."

DHS/CBP vigorously opposes the NAAE petition, claiming Congress has determined there should be one face at the border and DHS/CBP wishes to deal with only one union on all CBP employee-related matters. (CBP has in mind either NTEU or AFGE.) In a surprise move, DHS/CBP also announced it intends to attack the current status of the Agriculture Specialists (all GS-401s) as "professional employees" and asks FLRA to decide this issue as well.

The hearings before FLRA on the competing CBP and NAAE petitions began on November 15, 2004. At the 11th hour, the AFTE/NTEU coalition filed their own petition with FLRA, contending they jointly should be designated to represent all CBP employees, except Border Patrol. DHS/CBP has challenged the joint petition, contending the coalition is not "a labor organization" under the Statute, and only a "labor organization" is authorized to represent bargaining unit employees. FLRA is hearing this joint petition at the same time as the CBP and NAAE petitions.

During the week of December 1, 2004, the NAAE Executive Committee met to discuss the status of the NAAE, CBP, and coalition petitions before FLRA as

they pertain to CBP Legacy Agriculture employees. The general consensus of the Executive Committee, upon advice from our General Counsel, is that NAAE is very likely to lose its argument before FLRA on whether NAAE should be permitted to continue to represent the CBP Legacy Agriculture employees in a separate appropriate unit. The perception is that the two conservative Bush-appointees to FLRA control FLRA decision-making and ultimately would rule against any entity opposing what DHS/CBP wants to do – our "900-pound gorilla" (YOU WILL READ MORE ABOUT THIS APE LATER.) The NAAE Executive Committee is also fearful we could lose the argument that Agriculture Specialists within CBP should continue to be recognized as "professional employees." Given these realities, the NAAE Executive Committee launched "Plan B," entering into talks with NTEU and AFGE designed to learn which of the two large unions might offer NAAE's Legacy Agriculture bargaining unit members the best opportunity, as part of AFGE or NTEU, to continue to have their views and concerns expressed to CBP Management on agriculture mission issues and the unique needs of the Agriculture Specialists and Technicians. These talks carry out the mandate of a resolution unanimously adopted at the NAAE Convention in Atlantic City.

NAAE's Executive Committee and its *ad hoc* Advisory Committee, comprised of CBP delegates to the Convention, have now concluded that it would be in the long-term best interests of the CBP Agriculture Specialists and Technicians for NAAE to abandon its petition before FLRA and, instead, to take affirmative action to align its CBP bargaining unit with AFGE. AFGE has offered NAAE's CBP bargaining unit members the opportunity to set up a separate "council" within AFGE with strong support from AFGE at the national level to make sure that Legacy Agriculture employees continue to have a voice within AFGE and before CBP Management on all Ag issues. It also offers to support or take over the NAAE grievances and ULPs already in the pipeline filed on behalf of CBP Legacy Agriculture employees.

NAAE's Executive Committee reached this conclusion with the expectation and understanding that if NAAE abandons its own effort before FLRA and promises to withdraw its petition to have Legacy Agriculture declared an appropriate unit within CBP, CBP, in turn, (1) will withdraw its own opposition to the recognition of the NTEU-AFGE coalition as a labor organization qualified to represent all of CBP, except Border Patrol, and, importantly, (2) will discontinue its challenge to the "professional employee" status of the Agriculture Specialists. As this Newsletter goes to press, CBP Management has tentatively agreed to this "deal," and the NAAE Executive Committee and AFGE officials continue to work out the details of the arrangement by which Legacy Agriculture employees will become a part of AFGE through formation of a separate AFGE council. We do not anticipate FLRA or NTEU will have any objection to the final arrangements the parties contemplate.

While NAAE takes the steps described above only very reluctantly and only as a last resort, it believes the time has come for NAAE to ensure that the interests of its Agriculture Specialists and Technicians will be met through the most viable arrangement possible with a larger, stronger union within CBP, one the DHS/CBP Management is willing to recognize. These steps will also allow NAAE to concentrate its remaining resources and efforts on pursuing the best interests of

its USDA/APHIS/PPQ bargaining unit members, the PPQ Officers, the SITC Officers, and the other PPQ GS-401 professional employees, and on recapturing the Agriculture mission, for the most part abandoned within the "U.S. Customs" oriented CBP, focused almost exclusively on combating terrorism.

GENERAL COUNSEL'S REPORT

By Kim D. Mann

CBP, The New 900-Pound Guerilla

Much has transpired since the NAAE Convention in June. The vast majority of my time as NAAE General Counsel has been devoted to battling CBP on behalf of NAAE bargaining unit members who moved over to CBP in March 2003. From the very beginning, CBP has been dominated by the U.S. Customs culture and mentality -- "my way or the highway," regardless of the binding contract provisions between NAAE and Management. The results of the November 2, 2004 elections have only emboldened CBP's Labor Relations staff and other CBP Management personnel. CBP continues to believe it can do whatever it wants whenever it wants without regard to existing contracts or federal sector law as the Federal Labor Relations Authority ("FLRA") has applied it. This "teflon" attitude of arrogance is visible at every level where NAAE has had contact with CBP. Some of these confrontations are highlighted below.

I. DHS Personnel System Regulations, A Stacked Deck.

As widely reported in the press and as discussed in Eileen Thrift's article appearing elsewhere in this Newsletter, CBP staff abruptly broke off all discussions with the three unions, NTEU, AFGE, and NAAE, over the shape of the final regulations DHS and OPM will issue to create a new personnel system for DHS employees, primarily for the so-called Legacy Customs, Immigration, and Agriculture employees making up CBP. Management walked away from the table refusing to commit to making the many changes that seemed warranted by the fruitful union-management talks.

After CBP halted those mandatory "meet-and-confer" sessions in late July, leaders of NTEU and AFGE met with DHS Secretary Ridge, OPM Director Kay Cole James, and their staff in mid September 2004 to discuss Management's revised "final" drafts of those proposed regulations. According to reports, Secretary Ridge was impressed with the unions' arguments as to why those regulations as drafted were too harsh and unnecessarily and unfairly deprived employees of certain rights. He directed his staff to go back to the drawing board to make further revisions to lessen the adverse impact upon the unions and their memberships. The final regulations should be out by end of January or early February 2005.

According to reports in the press, when the final regulations are issued, they will delay the pay-for-performance provisions from taking effect for several years. Other provisions are expected to go into effect almost immediately and certainly will significantly curtail employee rights in the areas of the scope of what is negotiable, the ability to file grievances and ULPs, and the class of cases appealable to independent third-party organizations, such as FLRA and the Merit Systems Protection Board.

NAAE played an important role in the "meet-and-confer" sessions with DHS and OPM over the shape of the final regulations. As Eileen Thrift describes in her article, NAAE, along with NTEU, AFGE, and NFFE, was permitted to engage in extensive talks with DHS and OPM management in an effort to clarify the proposed regulations and reach agreement upon justifiable changes in them. She indicates she is hopeful we will see some improvement in the final document once it is issued early next year. The new DHS personnel system regulations are likely to become a model or template for all federal agencies in the future, including USDA/APHIS. One report has it that all of USDA will soon be subject to the pay-for-performance compensation system, similar to the one DHS is expected to adopt.

II. NAAE Grievances and Unfair Labor Practice Charges

A. "Sorry, We are CBP and We Don't Negotiate"

The CBP Labor Relations staff, in sharp contrast to Tom Valenti and his APHIS LR staff, have chosen to treat Legacy Agriculture employees as untrustworthy "children" – or is it "stepchildren"? The staff's favorite tactic is to provide NAAE (and the other legacy unions) extremely short notice of any change in conditions of employment, then implement those changes before negotiations with the union can even begin, and finally offer only to "meet and discuss" the changes with the union after implementation has already taken place.

This defiant, arrogant attitude of CBP LR staff rests upon two arguments. First, they contend the changes, all changes, are necessary and must be implemented immediately in order to carry out the urgent mission of CBP and to protect national security. Second, they contend the existing collective bargaining agreement (the so-called "Red Book") between NAAE and USDA/APHIS is not binding upon CBP because CBP never agreed to be bound by it. This position is totally indefensible: Section 1512(a) of the Homeland Security Act states that,

Completed administrative actions [including specifically personnel actions and agreements] of any agency shall not be affected by enactment of this Act or the transfer of such agency to the Department [of Homeland Security], but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

Whenever NAAE has attempted to negotiate with CBP after giving timely notice of its intent to bargain, NAAE has been faced with either a refusal to do so, even after implementation, or a willingness only to discuss the changes, without bargaining or negotiating, also following implementation. CBP employed this tactic when NAAE attempted to negotiate the impact and implementation and, to the extent permitted by law, the substance of changes in conditions of employment related to the cap on overtime, NIAP and COPRA, and the new grooming and performance standards.

Once it became clear CBP was not going to negotiate with NAAE, NAAE requested that FLRA file unfair labor practice charges against CBP. With respect to CBP's implementation of NIAP and COPRA, the Regional Office of FLRA agreed with NAAE and filed ULP charges against CBP for violating the statute when it implemented without providing adequate notice to NAAE and an opportunity to negotiate. In response to CBP's precipitous implementation of the grooming and performance standards without negotiating, FLRA staff just announced it also will file ULP charges against Management as NAAE has requested.

On one new issue, the creation of a new awards policy, the Agency, as it has consistently done, implemented first, but, at NAAE's request, has agreed to negotiate with NAAE during the first week of January 2005. However, CBP refused NAAE's and NTEU's requests to arrive at a single, uniform awards policy, applicable to all of CBP, through joint collective (NTEU/NAAE) negotiations. It is hard to rationalize this refusal with Management's public position that CBP needs to have but a single union to deal with in order to avoid the multiplicity of different contract provisions on the same subject and the obligation to negotiate with three different unions on every subject.

B. "Double Jeopardy" and "Employee Safety" Issues Subject To Pending Grievances

To date, NAAE has supported three grievances against CBP, all currently pending in different stages of completeness. The most important is a class-action grievance attacking the unilateral implementation of the cap on Agriculture Specialist overtime in fiscal year 2004, including the inclusion of CTT in the overtime computation. NAAE has invoked arbitration on this grievance, has received a list of seven potential arbitrators from the Federal Mediation Conciliation Service ("FMCS"), and is now awaiting a call from a CBP representative to select the arbitrator to hear the grievance.

In another pending grievance, a CBP Agriculture Specialist was issued a letter of reprimand for missing an overtime assignment (she had fallen asleep because of the unexpected side effects of doctor-prescribed medication) and then subsequently received a three-day suspension for exactly the same incident and thus offense. NAAE invoked arbitration on this "double jeopardy" discipline and has requested CBP to procure a list of arbitrators from FMCS.

In the third active grievance, a CBP Agriculture Specialist was suspended for allegedly failing to obey an order to board a ship even though she had advised her immediate supervisor that boarding the ship would seriously jeopardized her health and safety – tanks, humvees, and other military equipment were rolling off the very ramp she would have had to climb to board the ship. A CBP directive even directs an employee not to perform a function that would materially jeopardize the employee's safety. This grievance is currently pending at the second level within CBP.

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PPQ Labor Relations Update

Tom Valenti's Departure

Since Dr. Dunkle arrived at PPQ our ability to interact with our PPQ managers has dropped precipitously. All "labor relations" issues have been parked at APHIS's labor relations office, apparently at some distance from it. The policy and tactics of the first head of this newly empowered office were to go for the jugular (ours). We damn near choked during that period, but managed to hang on (barely) long enough for that new "chief" to get himself in enough hot water to be shown the door (breathe a sigh of relief). Following that nightmare came gentleman Tom Valenti who served as head of labor relations until just last October. Although not a lot of forward progress was made during his term on the

big-ticket items (no action on our national contract or direct communication with PPQ management), the tone of civility he introduced helped smooth the way for finding solutions to the usual basket of contentious issues that seem to be the norm around here. He will be missed. No successor has yet been named.

PPQ REPRESENTATION

Whom do we represent in PPQ?

PPQ Officers and Technicians? Right? Nope. Not a complete answer. Until last year we were PPQ Officers the technicians, lab techs, insect production workers and all of the rest of the permanent non-professional employees (except secretarial and clerical).

Recent FLRA decisions and agreements with Management have **grown** our numbers.

We now include:

All GS-401 employees (except for a select few): SITC Officers and Pest Detection Specialists, etc.

All non-managerial GS-436 Officers: Now includes Domestic Program Coordinator and Export Certification Officers

All field Identifiers: GS-414, GS-428, GS-430-- Entomologists, Botanists, and Plant Pathologists

To confirm and clarify our representation of these folks, NAAE has recently proposed an interim change to the “Red Book” Contract to help bridge us to the time when we finally finish our next contract. We’ll let you know how our negotiations go.

Let the folks know—the ones who do not get this newsletter, that they have a Union too!

Official Time in PPQ

One such contentious issue arrived at the end of November of 2003: PPQ management announced its intent to terminate our long standing agreement (since 1995) for the provision of six staff years to NAAE's Executive Committee to perform its union functions. This agreement arose during the days of "partnership" when the agency and union were making the first tentative steps toward a more meaningful relationship (that is a different story). The agreement for official time removed a major stumbling block to effective representation by enabling the Executive Committee to function without the added hardship of having to convince a local manager that "reasonable time" for each and every representational activity was a good thing and a requirement. In the many years since, we have operated under that agreement and have never had a significant complaint about it. Now PPQ was indicating it wasn't interested in our efforts on behalf of the agriculture mission, which had skyrocketed since the split to DHS. It was more concerned about preventing spending official time on CBP employees and their issues, even though they remained in the NAAE bargaining unit. PPQ proposed to return us to the pre-1995 days of limited union effectiveness and no sanctioned grants of official time.

Shock and horror: How will we function? Well, to make a long story short, we were at the negotiating table last June and finally signed an agreement, reducing the staff-year allocation of official time to 2.5 and capping each PPQ representative on the Executive Committee (including President Mike Randall) at no more than 50%, last August. Under the Union's new By-Laws, there will be no more than six PPQ representatives on the Executive Committee to share those 2.5 staff years. You may find some of us a little more difficult to get a hold of. A new national contract, should we ever get one, will replace this agreement.

NAAE Constitution and By-Laws

Speaking of new By-Laws, proposed amendments to it to accommodate having members in both CBP and PPQ easily passed. The new Constitution and By-Laws is complete and will soon be available for distribution.

AgLearn and Employees' Privacy on the Net

Last July, PPQ announced, without notice to the Union, it was developing a web-based training system similar to that operated by OPM (called GoLearn) that all employees would be mandated to use. Union's concern? While "proof of identity" required to obtain a password to use GoLearn amounts to the employee's email address, AgLearn requires the following confidential information ("e-authentication") be entered on the computer and into the internet: full name, social security number, date of birth, home city and state, agency name, duty station code, service computation date, the amount of your last pay check, pay plan grade and step, gov't email address, password, mother's maiden name, and a personal identification number. All this, the agency (PPQ, not DHS, mind you) alleges, is for "security reasons", to "prove you are who you say you are" and to "prevent identity theft". NAAE objected, forcing management to reannounce the program with a note that bargaining unit employees are not yet required to provide this information in this fashion. The Union has proposed that management can either mail a password to employees' homes or duty stations or have a supervisor hand-deliver the password. Management claims that a system has already been built to require all confidential information via the internet and cannot be changed. No progress has been made and a mediator has been assigned.

APHIS Travel Regulations

Last July, without notice to the Union, the Agency sought to change the meaning and intent of certain federal travel regulations (specifically when you can obtain reimbursement for mileage in a POV, and when you may be authorized per diem for travel), through the issuance of its July "Travel Tidbits". The Union provided Tom Valenti with exact references to the Federal Travel Regulations in order to expedite corrections to that document. Before he left for his new position with FAA, Tom advised us that the corrections had been made in a subsequent email. We are still looking for it. Be sure to let your union representative know if you feel you are not being properly compensated for travel expenses.

New York Asian Long-horned Beetle Project

Personnel problems continue to compound at the agency's ALB program in New York. Employee complaints and evidence of union animus abound. We are hoping for some relief through intervention by the conflict prevention and resolution office and violence-in-the-workplace office. If none is soon coming, we will consider setting up a permanent training center there for union representatives – "How To Deal With Difficult Management" – where we will be provided hands-on experience.

PPQ Uniform

For reasons not made clear to us, PPQ would like to change our black and white uniform to green pants with khaki shirt. Small problem – this is the same color scheme as worn by the security guards who work in the vicinity of our colleagues in Honolulu, Puerto Rico, and USVI pre-clearance. NOT AN APPROPRIATE UNIFORM FOR FOLKS WHO WORK AT AIRPORTS! YEAH, PPQ STILL WORKS AT AIRPORTS! We've proposed that management should at least permit a white shirt be worn by our folks at these locations to distinguish them from the security people. Unfortunately, Labor Relations (post-Valenti) would rather argue over our right to negotiate this uniform detail than work to come up with a reasonable solution and move on. We also need to be heard on a comfortable "tropical uniform" for working outside in the South and the Tropics. Labor Relations' last counter, in their supreme unreasonableness, was "We'll consider the short sleeve shirt." I thought we already had short sleeve shirts!

News Alert: Federal Occupational Health

The Federal Occupational Health agency is once again attempting to turn our Health Monitoring program, designed to assure your health and safety in a potentially hazardous work environment, into a Medical Surveillance program, accumulating personal information about your most private health conditions, for unknown reasons not connected to OSHA requirements or your workplace well-being. NAAE is making urgent inquiries into this with the intent of getting FOH back on track. However, in the interim we do not believe APHIS can require a single test more than OSHA requires for health monitoring related to work activities. Please contact your Regional Vice President (Willis Gentry or Dave Benner) if you hear of any plans in your port for "medical surveillance" including blood and urine testing.

Meet-and-Confer Sessions from NAAE's Perspective **by Eileen Thrift**

I received an email from Kim Mann in late May. He asked if I might go to the Union-Management meet-and-confer sessions in Washington, DC, the last opportunity for union input into the federal regulations slated to implement a new personnel system for all of U.S. Department of Homeland Security, including CBP. It was a last minute request. I realized the importance of NAAE having a representative involved so I decided to go.

The first day I arrived a couple hours early at the offices of the Federal Mediation Conciliation Services for the half-day meeting that was to start at 1300. (Throughout the sessions, I usually was the first to arrive.) We spent the first day on introductions, discussing the parameters of the following meetings, and the expected outcome. The meet-and-confer attendees were:

Management:

Ron James, DHS Chief Human Capital Officer (CHCO)
Kay Frances Dolan, DHS Director Departmental HR Policy
Bill Brush, DHS Assistant Area Director Newark, CBP (*alternate*)
Melissa Allen, DHS Senior HR Advisor (*alternate*)
Gregory Collett, DHS Branch Chief, Hdqtrs Operations, CIS
Dennis Reischl, DHS Chief Labor Negotiator, CBP
Todd Turner, DHS Director Human Capital Innovation (*alternate*)

Steven Cohen, OPM Senior Advisor for DHS
Ronald Sanders, OPM Associate Director, Strategic HR Policy
Don Winstead, OPM Deputy Associate Director, Center for Pay and Performance Policy (*alternate*)

Technical Advisors:

Cathy Mitrano, DHS General Counsel
Lynn Heirakuji, DHS LRER Team Co-Leader, CHCO
Chris Cejka, DHS PPC Team Co-Leader, CHCO
Randy Krugar, DHS HR Innovation, CHCO
Chuck Grimes, OPM Chief PGM Integration Team

Unions:

Frank Ferris, NTEU Executive Vice President and Chief Negotiator
Larry Adkins, NTEU Deputy General Counsel
Jonathan Levine, NTEU Assistant General Counsel, Negotiations

Brian DeWyngarert, AFGE Exec. Assist. To National President
Mark Roth, AFGE General Counsel
Charles Showalter, AFGE, President of INS Council, AFGE
T.J. Bonner, AFGE, President of NBPC, AFGE
Terry Rosen, AFGE Technical Advisor
Charles Bernhardt, AFGE Technical Advisor
Susan Grundmann, NFFE General Counsel
John Paolino, NFFE Secretary/Treasurer
Jim Davis, NFFE Business Representative
Eileen Thrift, NAAE, CBP Agriculture Specialist

FMCS Mediators:

Dan LeClair, FMCS Commissioner
Lynn Sylvester, FMCS Commissioner

The chief spokesman for the unions was already decided before I ever arrived. It was Frank Ferris, NTEU's Executive Vice President and Chief Negotiator. Frank wanted to know about Management's commitment to the final personnel systems document. DHS's Melissa Allen claimed the DHS representatives could not speak for OMB, the Justice Department, or the White House. OPM's Ron Sanders said the CFRs would be issued under the Administrative Procedures Act (APA). He said the Homeland Security Act (HSA) is in conflict with the APA; however, final regulations would be issued only after the "meet and confer" concluded. These regulations must be approved by Secretary Ridge and the Director of OPM, Kay Coles James. After their approval, then they must go through APA publication, notice, and final review before being issued as CFRs. AFGE's Mark Roth stated that he believed that if the unions and management could reach agreement, the regulations could be issued under the HSA without going through APA. Otherwise, AFGE will litigate the changes in language if changes are made after agreements are reached.

Frank Ferris said that the unions did not want to talk about concepts, but about the actual final regs and their wording. He said he was not confident we could accomplish all that was expected in the time frame given to conduct the meet-and-confer sessions. DHS's Ron James said that not completing the entire "meet and confer" discussions before July 23rd would be unacceptable.

The next day the two principal unions agreed to have one representative at the table plus two alternates. Management wanted to talk about press releases, proposing the unions keep responses to media inquiries covered with unified statements from management and the unions. Frank Ferris objected, stating that if unions believe their time is being wasted, then its only alternative is to go to the press or to the Hill. OPM's Steve Cohen said that unions going to the media or the Hill sounded like a threat and questioned what impact that would have on future discussions. Frank's response was that we cannot be expected to act in a bargaining capacity when this is not bargaining, but only a meet-and-confer session.

Everyone agreed to go over each of the proposed personnel system regulations section by section. We would list the ones the parties modified by agreement and those on which no agreement was reached. We talked about the market based pay system. It would not be a piece rate or a salary rate system. Management stated that it could complete a salary survey for around \$30,000. DHS's Melissa Allen said the requirement to issue joint OPM/DHS regulations would avoid negatively impacting the rest of the government employees (non-DHS). There were discussions about TSA, Secret Service, Coast Guard, and Stafford Act employees. The unions expressed concerns over the bargaining rights of these special groups, their whistle blower protection rights, and how the new DHS/OPM regulations will affect them.

Frank Ferris stated that the unions should not be on the outside looking in while DHS is in consultation with OPM over the content of the regulations. Melissa Allen's response was that the unions would be involved before OPM was involved at the point when the unions wanted to change a cluster or developmental pay band; management's intent was to involve the unions in the development and design stage before going to OPM.

Frank Ferris observed that much of what management proposed in the draft regulations has no factual basis or reasoning behind it. He asked whether there should not be some evidentiary data to justify the proposed changes.

Melissa Allen explained that Management would soon be issuing interim or temporary final regs. (This never did happen.) These can be changed without going through a public comment period if the changes were already commented upon during the earlier public comment period. Once the regs are published as final, any more changes must go through a new round of public comment. Management can avoid the delays of a public comment period by issuing continual changes to "interim regs" which never become "final regs." Interim regs have the full force and effect of final regs -- they must be observed and enforced.

We talked about union involvement in Management's TAG (Technical Advisory Group) teams. The unions expressed concern that union participation in TAG teams would produce the same results as the Design Team in which the unions participated, but where their contributions or proposals were completely or largely ignored. The unions discussed involvement in the TAGs during a caucus outside the meet-and-confer room. NAAE feared that union participation in TAGs would only lend credibility to the flawed process whereas another union thought that the unions must be included in the process of design and development of such broad changes as pay for performance, labor relations, and disciplinary actions because the ultimate product will be imposed on all employees.

The unions are especially concerned about the pay-for-performance regs. How will Management insure the evaluations of employees are fair, transparent, and a true reflection of employee performance? Management's response was that training would be provided to all supervisors/managers before the pay-for-performance is implemented.

However, Management did not address accountability of managers/supervisors who discriminate or unfairly evaluate performance that in turn affects employee pay. Under the draft regs, the only employee recourse is to go before the Performance Review Board (PRB) with an appeal. The composition of the PRB is undecided.

There were many long discussions and concerns over the proposed changes to employee and union bargaining rights, union representation of employees in formal and Weingarten meetings, the slanted appeals process, the status of current negotiated agreements under the proposed regs, the composition and authority of the Homeland Security Labor Relations Board (Board), mandatory removal offenses (MROs), lengthy probationary periods or initial service period (ISP), and post-implementation bargaining.

There was heated debate over the MSPB appellate procedures found at section 9701.706 of the proposed regulations. For example, this section as currently drafted will not allow reversal of the Department's decision to remove an employee under most circumstances nor allow for recovery of attorney's fees or back pay unless the Agency action is reversed in its entirety. It also lessens the Agency's current burden of proof from "preponderance of the evidence" to "substantial evidence" in the Department's decision to remove an employee. Frank Ferris referred to this as "the Anna Nicole Smith school of jurisprudence."

In section 9701.515, dealing with representation rights and duties, Frank Ferris observed that Management seems to want to do substantial harm to the established union right to attend formal meetings. Bill Brush, a CBP manager type from New Jersey, commented that management needed to have meetings without the unions because union reps would get too involved or take over the meeting rather than sit quietly. Frank responded: "In your unit, if some employee or union rep suggested that holidays should be rotated so that even new employees can get Christmas off, in my experience other employees will corner that individual in the lunch room, lock him in a container, and ship him off to Yemen."

The Secretary's authority to overturn decisions of the Board was discussed. Management did not want to tie the hands of the Secretary. Frank Ferris' response: "It's comforting to know that the Secretary will consult Nancy Reagan's astrologer." As for the composition of the Board, Frank said, "We're concerned that the Board will be made up of Heritage Foundation rejects who can't get a job anywhere else or of political appointees who are unqualified."

We spent much of our meeting time in caucus, going over union and management changes in the language of the proposed regs, and joint meetings to discuss the language changes. On July 8, a joint letter from NTEU, AFGE and NAAE went to Secretary Tom Ridge and OPM Director Kay Coles James, requesting additional time for the meet-and-confer process and listing reasons for the additional time. Ultimately, DHS and OPM refused, despite substantial progress in reaching tentative agreement on certain changes to the draft regulations. As I write this article, I am told the final version of the DHS/OPM

Personnel System regulations will be issued by the end of January 2005. We shall see how many, if any, of the numerous changes the unions and Management agreed to during the 24-day meet-and-confer sessions actually make it into these final regs.

Overall, I felt the process was very interesting. Management reps were doing what they were expected to do. The union reps were doing their best to mitigate the proposed changes. I thought Frank Ferris was a good choice as spokesman. He was quick witted, intelligent, and NTEU's best negotiator. I even caught Management laughing at his witticisms, even at their own expense!

The New "NOT" for CBP by Christine Courtney- CBP Northern Region VP

The first thing I want to say about the "New NOT" is that the "NOT" we recently attended is not the NOT we have known PPQ to operate prior to March 1, 2003. We attended a "Customs and Border Protection Academy – Frederick, Maryland." This distinction was made very clear to CBPAS (CBP Agriculture Specialist) class 0402 on the very first day when the rules were explained to us.

Let's backtrack, however, to the week before our arrival. Many of the promoted Technicians, including the two of us from St. Louis, were told on Wednesday, June 23 2004, that we needed to report on Monday, June 28 for Agriculture Specialist Training at the Professional Development Center in Frederick, Maryland. We were sure this was a mistake because we hadn't even been told we had been given the Specialist jobs. It turned out it wasn't a mistake, and we were also told that if we didn't go right then, there would be no guarantee the positions would still be available in the future. Clearly, this was a now or never situation. Our Port Director gave us administrative leave for the rest of the week so we could make our personal arrangements to leave home for two months. Because of the short notice, we were given no opportunity for pre-academy training that had been made available to other Agriculture Specialists and CBP Officers.

On the first day of class, we learned the rules under which we would operate for the next nine and a half weeks. Mr. Edwards, our class coordinator, and an instructor from FLETC, explained these rules to us. We could not be one minute late for class at any time. All instructors and staff at the PDC would be addressed as Mr. or Ms. This is also how we would be addressed. We could not leave the room to go to the restroom without permission from the instructor. We were not allowed to talk to each other except during breaks. There would be no slouching, no chewing gum or eating of any kind in the classroom, and our uniforms would be clean, wrinkle free, and conform to the uniform guidelines laid out to us. The women could not wear their hair below the bottom of their collars, males had to trim facial hair, no earrings. Pretty much all of the uniform standards that recently were presented to CBP uniformed staff. The class coordinator for

CBPAS 0401, Mr. Garcia, spent a great deal of time discussing proper footwear and what an appropriate heel was.

The consequence of non-compliance with the rules was that a student had to write a memo explaining why he or she committed the infraction and what he or she would do in the future to be compliant.

The PDC instructors were not permitted to modify these rules for their time in the classroom. If an instructor said, "If you need to leave the room, please do so without interrupting the lecture," the instructor was chastised. If the instructor failed to notice a student was late and failed to request a memo, the instructor was scolded. It was apparently made very clear to the instructors who were in charge. If a student had to write three memos, there would be disciplinary action.

One Specialist had to write a memo for slouching in his chair and not sitting up straight. Another Specialist, during the last week of class, had to write a memo because the top button on her shirt had opened and she hadn't noticed.

PDC staff was discouraged from talking to us outside of class. We were not allowed to discuss class topics with them, unless it was during class. Otherwise, it might give some students an unfair advantage.

The class performance standards have changed as well. Previously, tests were generally short answer, and a student had to maintain a cumulative average of 80% to graduate. There was also a final exam. Under the new rules, every test has to be passed with a score of 80%. If a student scores less than that on a test, he or she has remediation and will be allowed to retake the test. If the student still scores less than 80%, then he or she will be sent home. A student will be allowed to retake three tests; upon scoring less than 80% on the fourth test, there is no retake; the student is simply sent home.

There are reasons many of us thought this rule unfair. It costs a lot of money to send someone to CBP Academy, and with that investment in mind, it seems prudent to make sure that if someone is struggling, he or she should be given every opportunity to master the subject the student is struggling with. The stress levels for the students were exceptionally high because every test was a "do or die" situation. At the CBP Academy in Georgia, CBP Officers have to get only a 70% on their exams to pass. We are paid no more money; yet, we are held to a higher standard. We lost four students during our time at the Academy, none of whom would have been sent home if the FLETC standards had been applied as they are for CBP Officers. There was one occasion when four people had to retake exams and, because of a grading error, were erroneously told they had all failed the retakes. It took all of one day to straighten it out, but meanwhile the Specialists spent the whole day wondering which of them might be going home. It was very difficult for them to pay attention in class with that hanging over their heads.

We did not discuss any topics of agriculture significance until the middle of second week of class. The first week and half was spent on "Introduction to CBP." Apparently, contrary to what I have learned, CBP started in 1789. We were shaking our heads over this "revelation" because we all know that CBP started in 2001. The most significant agriculture event in CBP history, according to our lecturer, was the formation

of the Beagle Brigade in 1984. The impression that this was a Customs takeover was reinforced when they handed out our interim uniforms. The polo shirts said “Customs Officer” on the badge patch. Upon graduation, we received credentials that say, “US Customs” and “Department of the Treasury,” not Customs and Border Protection. When the class coordinator brought in the new uniform guidelines memo, he claimed this same memo had been sent to our union. We asked what union was he talking about and he said NTEU. We told him that our union was NAAE. He said he didn’t know anything about that.

We also had some really good experiences while we were at the Academy. The PDC instructors (from APHIS) were terrific. They were incredibly patient and did what they could to make sure we understood what they were trying to teach us before moving on. The changes in the program were hard for them as well. We were all guinea pigs. The tests, with the exception of Pest Identification, were multiple-choice exams, with the questions chosen by the computer and the tests graded by the computer. Since this was so new, if we had a problem with a question on a test, we could submit a query and the question would be reviewed to see if changes needed to be made.

Our class coordinator, Mr. Edwards, did not let anyone treat us disrespectfully. The hotel where we stayed when we first arrived in Frederick never had any clean towels, and some of the rooms were bug infested. Mr. Edwards moved the entire class to a nicer hotel. When one Specialist’s father had a heart attack, Mr. Edwards drove him to the airport and then picked him up on his return. He also arranged for the Specialist to receive instruction on the topics he had missed during his absence. Mr. Edwards also took a student out to find someone to do her fingerprints for her background investigation. When the person who was conducting my BI interview wanted me to miss all of Seed Identification and was very stubborn when I asked her to pick a different time, Mr. Edwards called her on the phone and told her she had to accommodate me, not the other way around.

Despite some difficult times and some obvious shortcomings with the system itself, by the time we graduated, I felt Mr. Edwards had gained a new respect for us, and we for him as well. I felt this respect also extended beyond just the classroom. When Mr. White came up from FLETC to talk to us on graduation day, he gave us a lot of career advice. The most surprising advice he gave us was to talk to our union representatives when we returned to our ports to find out what NAAE could do for us. I was very surprised and gratified to hear him say that.

Seasons Greetings!
Happy New Year!

We hop you enjoyed this ishue
We've made "a lot of wrong mistakes."

Gee, Yogi or Just a Booboo



**No! This is the beginning. We Have
Just Begun to Fight!
Now More Than Ever! Encourage Your Co-
Workers to Join! Strength In Numbers!**



REQUEST FOR PAYROLL DEDUCTIONS FOR LABOR ORGANIZATION DUES

Privacy Act Statement

Section 5525 of Title 5 United States Code (Allotments and Assignments of Pay) permits Federal agencies to collect this information. This completed form is used to request that labor organization dues be deducted from your pay and to notify your labor organization of the deduction. Completing this form is voluntary, but it may not be processed if all requested information is not provided.

This record may be disclosed outside your agency to: 1) the Department of the Treasury to make proper financial adjustments; 2) a Congressional office if you make an inquiry to that office related to this record; 3) a court or an appropriate Government agency if the Government is party to a legal suit; 4) an appropriate law enforcement agency if we become aware of a legal violation;

5) an organization which is a designated collection agent of a particular labor organization; and 6) other Federal agencies for management, statistical and other official functions (without your personal identification).

Executive Order 9397 allows Federal agencies to use the social security number (SSN) as an individual identifier to avoid confusion caused by employees with the same or similar names. Supplying your SSN is voluntary, but failure to provide it, when it is used as the employee identification number, may mean that payroll deductions cannot be processed.

Your agency shall provide an additional statement if it uses the information furnished on this form for purposes other than those mentioned above.

1. Name of Employee <i>(Print or Type-Last, First, Middle)</i>	2. Employee Identification Number <i>(SSN or Other)</i>	3. Timekeeper Number
4. Home Address <i>(Street Number, City, State and ZIP Code)</i>	5. Name of Agency <i>(Include Bureau, Division, Branch or Other Designation)</i> <input type="checkbox"/> <input type="checkbox"/>	

Section A-For Use By Labor Organization

Name of Labor Organization *(Include Local, Branch, Lodge or Other Appropriate Identification)*

I hereby certify that the regular dues of this organization for the above named member are currently established at \$ _____ per	(biweekly pay period) (calendar month). <i>(Strike out whichever period is not appropriate, based on arrangement with the employee's agency.)</i>
Signature and Title of Authorized Official	Date <i>(Month, Day, Year)</i>

Section B-Authorization By Employee

I hereby authorize the above named agency to deduct from my pay each pay period, or the first full pay period of each month, the amount certified above as the regular dues of the (Name of Labor Organization):

_____ and to remit such amount to that labor organization in accordance with its arrangements with my employing agency. I further authorize any change in the amount to be deducted which is certified by the above named labor organization as a uniform change in its dues structure.

I understand that this authorization, if for a biweekly deduction, will become effective the pay period following its receipt in the payroll office

of my employing agency. I further understand that Standard Form 1188, Cancellation of Payroll Deductions for Labor Organization Dues, is available from my employing agency, and that I may cancel this authorization by filing Standard Form 1188 or other written cancellation request with the payroll office of my employing agency. Such cancellation will not be effective, however, until the first full pay period which begins on or after the next established cancellation date of the calendar year after the cancellation is received in the payroll office.

Contributions or gifts (including dues) to the labor organization shown at left are not tax deductible as charitable contributions. However, they may be tax deductible under other provisions of the Internal Revenue Code.

Signature of Employee	Date <i>(Month, Day, Year)</i>	
FOR COMPLETION BY AGENCY ONLY- The above named employee and labor organization meet the requirements for dues withholding. (Mark the appropriate box. If "YES", send this form to payroll. If "NO", return this form to the labor organization.)	YES	NO

1-Agency Copy

2-Labor Organization Copy

3-Employee Copy

YOUR NATIONAL NAAE REPRESENTATIVES
(Your Input & Feedback Is Most Welcome)
PLEASE MAIL ALL DUES WITHHOLDING FORMS TO NAAE NAT'L
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