N.A.A.E.

National Association of Agriculture Employees

N E W S L E T T E R

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National Association of Agriculture Employees
Newsletter Issue No. 72 November 2006

A Message From Our President

Mike Randall

Best wishes from NAAE for a healthy, happy, holiday season.

With this season come surprising national election results and our hope for a more conducive atmosphere for better times for Unions and employees---at least in the legislative arena.

Recognizing this unique opportunity to approach a new Congress, NAAE has reactivated a special Legislative Affairs Committee. Former NAAE President Stan Freihofer will chair this committee and spearhead a special effort to have NAAE's message of protecting agriculture (AND AGRICULTURE EMPLOYEES) heard in the halls of Congress and elsewhere in Washington.

FOR PPQ

Make no mistake; the legal struggle we are engaged in on behalf of CBP Ag employees has profound implications for us in PPQ. The saddest reality is that we may end up a much smaller Union than we are now. Numbers represent strength, and numbers is not what we will have, should the courts decide to uphold FLRA's decision to sever us from our CBP AG folks.

The struggle in CBP over the designation of AQI employees as professional versus non-professional and what this means to bargaining units is important to us in PPQ as we are composed of two separate units, one of professionals and one of non-professionals. The notion that the Federal Labor Relations Authority (FLRA) could overturn a long-standing professional determination (Ag

Specialists and PPQ Officers as professionals) and ignore its own precedent and case law could not go unchallenged by NAAE. The same theory that the FLRA applied to Ag Specialists in CBP could be used in the future to harm our existing unit in PPQ.

THE PPQ BARGAINING UNIT

Currently, the NAAE Bargaining Unit in PPQ (by its FLRA Certification or by Agreement) is composed of two separate certified (by FLRA) groups of employees: permanent professional Plant Health Safeguarding Specialists (formerly PPQ Officers), Smuggling Interdiction and Trade Compliance Specialists (SITC), Pest Survey Specialists, Identifiers (Botanists, Plant Pathologists and Entomologists); and ALL permanent non-professional employees including Technicians, Insect Production Technicians, to mention a few of the positions we cover. We do not represent managers, confidential employees, or secretaries and clerical employees. Knowing who we are, and recognizing the hard facts of where we MAY be going if we lose the court case (a much smaller union without our CBP brethren), it becomes even more important to spread our message: the benefits of being involved in organizing, speaking for, correcting and improving our own workplace and in pursuing our mission as employees, protecting American agriculture. Union membership is the KEY. Tell your friends about NAAE. Dust off the Union rolls and make sure we maximize the number of names on those rolls. NUMBERS ARE STRENGTH. GET YOUR COLLEAGUES TO JOIN NAAE.

SITC CONTRACT NEGOTIATIONS and STEPS TOWARDS A COMPREHENSIVE CONTRACT

It is one thing to say we represent an employee, and it is quite another to say we *protect* an employee with a contract-- a contract that provides much more that the basic rights already provided by the Labor Statute. Winning the right to represent SITC employees was a legal struggle that took more than two years. There were hearings, the agonizing wait for decisions and sweating out the time for filing an appeal. . We finally won, but we had to start from scratch when it comes to contract coverage for SITC members. We could not demand immediate coverage by our dear old Red Book Contract. After enduring several short-lived labor relations regimes at APHIS, we finally forced the issue and received a go-ahead from upper management to create interim contract coverage for the SITC Officers (note: SITC technicians are and have always been protected by the "Red

Book" Contract.) The Interim Contract under negotiation is based upon the "Red Book" with some effort at modernizing and conforming some provisions to recognize the times.

Our long-term goal on the horizon is to have one "Green Book" that will provide coverage for ALL of the employee groups in our PPQ bargaining unit. We needed urgently to take this first step towards interim coverage for our uncovered SITC employees before proceeding with "Green Book" negotiations—the negotiations you all know about, the ones that have been on and off again for years – to cover all professional and non-professional employees in PPQ and, if we win our court case, in CBP. The difference this time—we have a new Labor Relations Chief in APHIS, Elizabeth (Beth) Blackwood, and her staff who are truly interested in how we feel and think and are capable of constructive negotiations (and not just running down the clock.) [Several of the staff are ex US Postal Service and are keenly aware of what can happen when employee views are not considered.]

As a first agreement on SITC Interim Coverage Negotiations: **PPQ and NAAE have agreed that SITC grievances can be pursued under the negotiated procedures used in the current "Red Book" Contract.**

Expect an SITC Interim Contract in the New Year.

EMERGENCY TDY PROCEDURES

NAAE has been extremely concerned about existing procedures and policies for fulfillment of required TDY personnel over the last several years. There are a number of reasons for this increased concern. Among these are:

1. The possibility of pandemic Avian Influenza outbreaks that at a minimum will require eradication in poultry (if not precipitate additional extreme measures to protect people from disease too);
2. The possibility of agricultural disease eradication necessitated by terrorist action;
3. Concern over the way in which creation of DHS has robbed us of our personnel available for emergency TDYs and in general crippled or destroyed PPQ's ability to respond to a "normal" agriculture emergency;
4. Pronouncements from our Agency Administrator on up to the level of the President proclaiming PPQ an "Emergency Response Agency" responsible for a host of emergency responses outside our standard domain of

agricultural emergencies which may include extensive duties outside our expertise and job description;

5. The increasing age and decreasing numbers of PPQ staff available for emergency TDYs and the Agency's failure to recognize the implications of these constraints; and
6. Increased number of calls to the Union from the field announcing more and more mandatory forcings of unit personnel to TDY duties (this includes SITC personnel –personnel who Management told us expressly, were to be avoided in assignment of emergency TDY).

So far, the Agency's response to this new " 'Mergencies-R-US" world has been to circulate several draft and then float idea balloons regarding new TDY assignment procedures. The concept is to learn who the personnel are who will be on forced TDY before they are needed. Just what we need—bags packed 24 hour alert—sound the klaxons—gas the bombers and GO. Old-timers signed on for a SLIGHT bit of this---Newbies signed on for some of this –BUT, NOT ALL OF THIS.

There can and should be a FEW people, a FEW VOLUNTEERS – and the operative word is "volunteers" -- with bags packed in readiness. These organizations have/had acronyms RRT, IRT. PEPPA, to name a few. These organizations come and go. Unfortunately, these organizations seem to disappear at their peaks of perfection or when they're needed most.

The Agency's biggest concern was the time it takes to get someone to deploy. It ALWAYS has and ALWAYS will take time..a day or so to get a BODY.

Emergency TDY assignment procedures are a patchwork of what our National Contract provides, local contract provisions and a number of policies that have come and gone. Voluntary procedures are to be supplemented by mandatory procedures. When a volunteer is not secured under Regional procedures, the onus evolves to the local "SEND ME A BODY" system. Calls went out to SPHDs or PDs to literally "send a body."
[Every local unit is entitled to its own voluntary/mandatory procedures to use when the "send me a body" system comes into play. Dust off the old procedures and become familiar with them. If you do not have a local procedure, call your NAAE Regional Vice President for guidance in negotiating a local system ASAP.]

One national TDY assignment system idea we examined involved placing employees on mandatory 90 day availability for a particular quarter of the year. Of course, "the devil was in the details." There was no answer as to the effect of

a "call up" on one's 85th day of availability, no answer as to how the quarters would be selected, no answer to "seasonality" (emergencies usually pick a particular time of year,) no answer as to how annual leave scheduling would be affected, no answer as to what would happen if employees were needed again after their time of responsibility, and no answer to any question that would indicate that the whole system "might not work."

Even if the Agency were to propose such a system, it was fairly obvious to NAAE that some type of seniority-based system would be necessary to mete out the "on-call" quarters; moreover, the yearly annual leave bidding would have to "mesh" with a "quarters" system. Recognizing the train wreck this would cause, NAAE called for answers to our questions and prompt consideration of our concerns (necessary negotiations) much earlier this year—before any leave bidding for 2007 could occur. NAAE heard nothing.

The latest word is that the Agency is going back to the drawing board for a new TDY assignment plan. Hopefully the Agency has heard our constructive critique of its original plan and will come up with something a little more friendly to employees. WE WILL KEEP YOU POSTED.

PPQ GS-401 ANNOUNCEMENTS

Have you been searching USDA JOBS lately and seen the nationwide GS-401 Plant Heath Safeguarding Specialist announcements (PHSS)? Unfortunately, for all of you who have asked, there is nothing special going on in PPQ. As you may know, all GS-436 PPQ Officer positions have recently been migrated to the GS-401 PHSS position a result of US Office of Personnel Management's decision to abolish the PPQ Officer position. As such, the old GS-436 register could no longer be used. There is currently no entry-level register to bring new GS-401 employees into the PPQ system, so once the PHSS job was classified, it became possible to announce for a new GS-401 register. The GS-401 announcement you have seen IS the announcement for that register.

Wording in the announcement stating: "many positions available" simply is not true and is just part of the "boiler plate" language for such register announcements. The "many positions" the announcement seems to promise, has led to wild speculation among our brethren in CBP, particularly when they see the announcement for certain duty stations that never really had many personnel stationed there when PPQ worked the ports.

While there may be some new positions on the horizon as come in most budget cycles, the announcement is intended for replacement of retirements and other staff attrition. However, we are encouraging people who want top apply, to apply….JUST IN CASE.

Currently the NAAE Executive Committee is investigating how much leeway is possible on the hiring level. We are also concerned about reports that current GS-401 employees are being required to take the dreaded pre-employment test.

A particularly reviling aspect of these GS-401 announcements, is that these GS 5/7 entry positions are advertised as promotion potential GS-11. Predeparture inspection positions in Hawaii and Puerto Rico are capped at the GS-9 level. Is it the Agency's intent to treat new hires better than its existing employees????? PPQ has not heard the last of this!

FOR CBP

Recently, many CBP Agriculture Specialists received an e-mail from the President of NTEU. In that e-mail Colleen Kelley told you that the defining issue of our legal struggle was about "specialization" of positions and that NTEU was not opposed to specialization. Well, that's just great---No one is opposed to specialization...and she couldn't be farther from missing the point:

The issue is about professional positions and a professional employee's RIGHT under our statute to choose whether or not to be included in a larger group of non-professional employees for bargaining and contract purposes.

Doctors, lawyers, teachers, scientists, chemists, architects, and above all, AGRICULTURE SPECIALISTS in CBP to name a few highly educated employee occupations who are given discretion to exercise independent judgment in perfoming their duties, are PROFESSIONAL EMPLOYEES. They deserve special work rules. Customs and Border Protection Officers, in contrast, are non-professionals.

Perhaps the difference of combining professionals with nonprofessionals is a difference that has to be lived to be appreciated.

Professionals are different employees than non-professionals. Professional job qualifications require college training and/or additional professional experience. Professional work emphasis is on independent decision-making and program delivery on an intellectual basis. Professionals are paid for what they know. Professional jobs include doctors, lawyers, teachers, etc. Professionals often make their own work plans. There is greater emphasis in the exercise of discretion and less emphasis on physical labor in program delivery. Nonprofessionals are instruments of *physical* delivery of the program. They are not involved in the creative process of work planning and decision-making. There is less personal responsibility for decisions made.

Ag Specialists as professional employees are decision-makers. They plan their own work, they make binding regulatory decisions drawing upon a scientific background they exercise discretion in determining what, who, and how to inspect, and they bear a great deal of personal responsibility for the decisions they make.

Congress passed the law that lets professionals decide whether or not they want to be included with non-professionals in a single bargaining unit. Congress did so specifically to protect the unique needs and rights of professionals as a minority group in a mixed unit with nonprofessionals. (Professionals are far outnumbered by nonprofessionals in the Federal workforce.)

Professionals have the right to vote to have a separate bargaining unit, separate from the nonprofessionals, as well as different work rules (i.e. contracts).

As you can see, when professionals (the way NAAE sees Ag Specialists and other minority occupations of professional employees in CBP, such as chemist, criminologists, attorneys) are vastly outnumbered in a combined unit of non-professional CBP Officers in approximately a 19 to 1 ratio, there is not a whole lot of incentive for the organizers of the bargaining unit to provide proper and full representation (e.g. pursue Ag Specialist's grievances, examine and act on conditions of employment peculiar to Agriculture Specialists, etc.) for the professionals and their special professional issues, let alone negotiate special rules for this professional minority (i.e. the Ag Specialists).

We believe that Ag Specialists in CBP will continue to have special conditions of employment that will need addressing, but will get short shrift if our mislabeled professionals are forced into the "bad-fit" of a majority non-professional unit.

This is why we continue to fight (in court) for the right of Ag Specialist to choose if they want a voice in their own representation as professional employees. We'd concluded the final decision on the professional employee issue should be left up to a neutral court rather than to an increasingly political FLRA, backed up by NTEU.

THE U.S. CIRCUIT COURT OF APPEALS HEARING ON NAAE'S LEGAL CHALLENGE TO THE FLRA DECISION ON THE PROFESSIONAL STATUS OF AG SPECIALISTS OCCURRED ON OCTOBER 17, 2006. WE NOW ARE AWAITING A DECISION. PLEASE READ NAAE LEGAL COUNSEL'S REPORT TO UNDERSTAND HOW WE GOT TO THIS POINT AND READ THE LETTER BELOW WHICH IS A BULLETIN, UPDATE AND SUMMARY OF OUR EXPERIENCES AT THE HEARING.

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A BULLETIN FROM OUR GENERAL COUNSEL REGARDING OUR 9th CIRCUIT HEARING

October 23, 2006

VIA EMAIL

To: NAAE Executive Committee

Re: Oral Argument - 9th Circuit

Dear Ladies and Gentlemen:

The oral argument on October 16 before the 9th Circuit went reasonably well. Despite being adequately prepared, in hindsight, I wished I had answered some of the questions from the Judges a little differently. (It's always that way.) I continue to believe NAAE has a shot at winning, perhaps even 50-50.

The three Judges on the panel who heard our appeal were very much engaged, asked all three of us (the two FLRA and CBP attorneys and myself) numerous questions, and appeared very interested in the legal issues raised in our case. At the end, after one hour of argument, they thanked us publicly for our presentations, took the case under consideration (meaning we will get a decision from the Court in due course, probably three to four months, possibly longer), and observed off the record they found our argument concerning a procedural matter, namely the Court's "jurisdiction" to review the FLRA decision, to be an interesting but difficult issue.

Our problem with respect to the Court's "jurisdiction" is the restrictive wording of the statute. It expressly prohibits judicial appeals of final orders of the FLRA "issued under § 7112 of Statute" (§ 7112 sets forth the criteria the FLRA must apply when determining whether a proposed bargaining unit is "appropriate") when "involving appropriate unit determinations." NAAE's argument is that the FLRA ruling we are challenging in court -- that Ag Specialists are no longer professional employees -- was not issued under § 7112, but instead was issued under § 7111 (the section determining who is eligible to vote in elections) and did not "involve" an appropriate unit determination. While the

ruling was issued during the course of an appropriate unit determination proceeding, that ruling and the employee-status of Ag Specialists were never factors in the FLRA's actual determination of the appropriate unit, the single, wall-to-wall unit for all of CBP.

The Court, based upon its questions of us, seemed skeptical about the fine line NAAE was trying to draw in claiming the FLRA's professional-employee ruling was not part of or involved in the FLRA's appropriate-unit determination even though this issue would not have arisen at all but for the appropriate-unit determination proceeding. However, the Court seemed equally skeptical about the extreme position FLRA was taking, arguing that no FLRA ruling determining the status of federal employees filling other positions excluded from belonging to bargaining units, such as supervisors and confidential employees, is ever appealable to a court as long as FLRA makes that employee-status ruling during the course of an appropriate-unit determination proceeding.

The Court was so interested in the procedural jurisdictional issue -- whether the Statute allows the Court (gives it jurisdiction) to review the FLRA ruling on the employee-status of Ag Specialists -- that we had virtually no oral-argument time left to debate the merits of the ruling itself. NAAE's position on the merits is that the record before FLRA Regional Director lacks substantial evidence to show that Ag Specialists are not "professional employees" under the statutory definition, § 7103(a)(15). NAAE disputed in its written brief filed with the Court (but did not get a chance to argue orally) the validity of the FLRA's principal argument on the merits -- that USDA Manuals direct how the work gets done and the difficult, complex questions are handed off to USDA Specialists to answer.

While we definitely have a reasonable chance of prevailing, it's also possible it could be a somewhat hollow victory. NAAE might prevail on the issue of the Court's jurisdiction but lose on its attack upon the merits of the FLRA's ruling. Neither the body language of the Judges nor the tone of their questions or their reaction to our answers was sufficiently telling to permit me to make even an educated guess as to how any of the Judges might rule. We will just have to wait and see. Hopefully, it won't be too long.

Sincerely,

Kim D. Mann

KDM/snp

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GENERAL COUNSEL'S REPORT

By Kim D. Mann

This article was written prior to our hearing before the 9th U.S. Circuit Court of Appeals regarding CBP Representation.

I. Efforts of NAAE In Court Pay Big Dividends For CBP Legacy Agriculture Employees; More to Come

A. U.S. Court of Appeals Hears NAAE Challenge to FLRA Unit Representation Ruling; AFGE Challenges CBP Elections.

While NTEU may lay claim to receiving the most votes to represent CBP employees, including Agriculture Specialists and Technicians, during the recently concluded CBP election, those election results remain up in the air for two reasons.

First, AFGE has challenged those election results as biased and unfair, filing an appeal with the Federal Labor Relations Authority ("FLRA"). At publication time, the FLRA continues to examine these charges. By law, FLRA can not certify the election results (a necessary step in order to make them official) until it concludes that investigation and is able to find the election was properly and fairly conducted. The AFGE charges of election impropriety are numerous and serious. If sustained, FLRA may have to order a re-run of the election. AFGE believes the results of FLRA's investigation may not be known for many months. In the meantime, the *status quo* prevails. NAAE continues to represent all Agriculture Specialists and Technicians in CBP; AFGE continues to represent CBP Officers who are former INS agents; and NTEU continues to represent the former Customs inspectors, now CBP Officers.

Second, NAAE has launched an on-going judicial challenge to FLRA's determination that Agriculture Specialists are no longer professional employees, a determination FLRA made during the course of the FLRA hearings on the unit representation petitions of CBP and NAAE. NAAE's legal challenge is pending before the U.S. Court of Appeals for the Ninth Circuit in Los Angeles. Incredibly, NTEU has filed a brief with the Court in support of FLRA! The Ninth Circuit Court of Appeals will hear oral arguments on behalf of NAAE and FLRA on October 16, 2006. It may take two to three months or even longer for the Court to issue its decision. This court challenge will not hold up the FLRA's election-results certification process. If and when FLRA certifies those results, the prevailing union (right now, NTEU) will take over representing all of CBP except Border Patrol, at least on an interim basis.

The significance of the ultimate Court decision addressing NAAE's legal challenge and its implications for the yet-to-be certified CBP election results is clear: if NAAE wins the court appeal, Agriculture Specialists will be given another chance to select their union representative, regardless of the outcome of AFGE's challenge to NTEU's election "win" and regardless of FLRA's certification of the election results. If the Court agrees with NAAE that FLRA improperly deprived CBP Agriculture

Specialists of their "professional employee" status, the Agriculture Specialists must be given an opportunity, through a special election, to determine whether they wish to be lumped together with the 20,000 "non-professional" CBP Officers in a single unit for union representation purposes. (Agriculture Specialists currently, and in the past as PPQ Officers, have always been in a unit separate from the non-professional employees in PPQ as well as in CBP.) If the Agriculture Specialists elect to remain separate from non-professional CBP Officers, they will then have an opportunity, also through the election process, to determine which union, NAAE or NTEU (or no union), they wish to have represent them in the future. Obviously, NAAE hopes the Agriculture Specialists, if given this unique, hard-fought-for opportunity, will determine they wish to remain separate from the non-professional CBP Officers and to have NAAE continue to represent them.

B. NAAE, Together with NTEU and AFGE, Persuaded the Courts to Throw Out the DHS Personnel System Regulations.

NAAE joined with NTEU and AFGE in challenging in court the heart of the new DHS Personnel Systems regulations. The Union lawsuit, filed in the U.S. District Court for the District of Columbia, attacked the new personnel system regulations primarily on the grounds they would deny unions the right to bargain collectively with DHS agencies, including CBP, and would illegally limit the authority of FLRA to independently review disciplinary actions of DHS. The Unions' attack did not challenge the pay-for-performance component of the new DHS regulations.

The U.S. District Court for the most part agreed with the unions. It permanently enjoined DHS from implementing critical aspects of those regulations. The District Court rejected, however, Unions' claims that the DHS regulations impermissibly restricted the scope of what the unions could bargain and that DHS lacked congressional authority to bestow a review function upon the Merit Systems Protection Board ("MSPB") in cases involving mandatory removal offenses.

DHS and the Office of Personnel Management ("OPM") appealed the District Court's decision to the U.S. Court of Appeals for the D.C. Circuit. The Unions including NAAE filed a cross-appeal in the same court, seeking to overturn those two aspects of the District Court decision the Unions had lost. On June 27, 2006, the U. S. Court of Appeals affirmed the decision of the District Court insofar as it permanently enjoined DHS from implementing the key components of its personnel system regulations. The Court of Appeals went even further: it also overturned the District Court's decision to the extent it had concluded that DHS had congressional authorization to limit the scope of what the unions could bargain with DHS management.

FLRA and OPM have decided not to ask the U.S. Court of Appeals to reconsider its decision, but have not yet announced whether they will appeal that decision to the U.S. Supreme Court. If they do not or if they do appeal and the U.S. Supreme Court either refuses to review the decision of the U.S. Court of Appeals or upholds that decision, the DHS personnel system regulations will be effectively gutted. DHS will be precluded

from putting them into effect, although free to move forward with its pay-for-performance regulations. It also may propose a new, revised system of personnel regulations that complies with the court decisions or it could simply abandon plans to implement a new personnel system. DHS and OPM have not announced what course of action they intend to follow. It is also possible Congress will intervene and pass new law specifically authorizing DHS to revamp its personnel system regulations along the lines of what DHS had attempted to do until thwarted by the court actions. In the meantime, the Federal Service Labor-Management Relations Statute and the regulations, directives, and collective bargaining agreements currently in effect, including NAAE's "Red Book," will continue to exist and govern personnel matters and conditions of employment for CBP employees.

In fairness and with thanks for a terrific job well done, virtually all credit for the Union victory in the court actions in which NAAE participated must go to NTEU. NTEU's attorneys pulled the laboring oar in preparing the written materials submitted to the courts, in formulating the persuasive, prevailing arguments, and in appearing before the judges of those courts to drive home those arguments. NAAE's role was relatively minor. In sharp contrast, DHS and OPM staff responsible for crafting the fatally-flawed personnel system regulations and consulting with the Unions over their content epitomized throughout the entire process the type of high-handedness and arrogance that federal employees in general have come to expect from the leadership of the current Administration.

C. Arbitrator Upholds NAAE and CBP Employee in "Double Penalty" Grievance Dispute.

A Seattle arbitrator agreed with NAAE and its CBP bargaining unit member, an Agriculture Specialist, that CBP committed an improper personnel action when it imposed upon the Ag Specialist what amounts to a double penalty for the same employee misconduct. The Ag Specialist initially received a Letter of Warning from her first-line supervisor for falling asleep (because of an adverse reaction to medication) on the job. Ten days later, the Port Director, without acknowledging the prior Letter of Warning, issued the employee a proposed five-day suspension for the same incident. The CBP Agriculture Specialist contested the proposed suspension on the grounds that she had already been punished for the incident, the Letter of Warning, arguing the suspension would amount to a prohibited double penalty.

When the Agency refused to drop the suspension -- although mitigating it to a three-day suspension -- the employee filed a grievance, again alleging that any suspension amounted to a prohibited double penalty. CBP denied her grievance at all levels, but before the Union could invoke arbitration on her behalf, the employee resigned from CBP in order to enter law school. NAAE invoked arbitration anyway, and the issues of the prohibited double penalty and the arbitrability of the grievance -- *i.e.*, whether a former CBP employee lost her right to pursue her grievance under the "Red Book" when she left the Agency -- were placed before the Arbitrator.

Following a hearing and filing of briefs, the Arbitrator ruled in favor of NAAE on all issues. He concluded that the CBP employee did not lose her right to grieve even though she had left the Agency as long as the matter she was grieving arose while she was an employee of the Agency. He also determined that Letters of Warning are, under controlling USDA/APHIS procedures and existing directives, a form of punishment or discipline and that a federal agency may not penalize an employee twice for the same incident. Accordingly, he ruled the subsequent three-day suspension without pay was improper and violated the Back Pay Act. He ordered the Agency to compensate the employee for those three days with interest.

CBP disagreed with the arbitration result. It filed an appeal to FLRA, taking exception to both of the Arbitrator's principal rulings, the arbitrability of the grievance and the characterization of the Letter of Warning as a form of punishment. NAAE has replied in opposition to the Agency's exceptions. Those exceptions remain pending before FLRA with a decision expected in the near future.

II. NAAE Continues to Fight for PPQ Employees Notwithstanding a More Favorable Labor Environment

As explained elsewhere in this Newsletter, PPQ has been blessed in recent years with two excellent Labor Chiefs, both of whom have exhibited a concerted effort to understand what the rank-and-file employees in PPQ do and to appreciate the employment conditions under which they work. They also have attempted to be fair and reasonable in dealing with NAAE, especially at the national level. This enlightened labor environment, thanks to the leadership of the former APHIS Labor Chief Dennis McPeters and now his successor, Beth Blackwood, has made it possible for NAAE and Management to deal with each other on a professional basis, with mutual respect. This relationship has allowed the relative few problems that have arisen to be dealt with swiftly when necessary and fairly, sometimes favoring Management and sometimes favoring the employees in their outcome, but mostly resulting in compromise. This environment of mutual respect, understanding, and cooperation contrasts sharply with what NAAE has experienced in dealing with the hard-nosed, stubborn, management-is-always-right labor and employee relations staff in CBP.

A. Negotiations Have Led to Reasonable Implementation, Minimal Adverse Impacts.

Despite these positive efforts at PPQ, NAAE has not always been able to resolve every one of its differences with PPQ Management. Some have led to extensive negotiations between the parties when they failed to reach agreement upon how the Agency would implement changes in condition of employment or how the Agency would protect adversely affected employees so as to minimize the impact of these changes upon the bargaining unit. Some of those more important negotiations are described elsewhere in this Newsletter.

One particularly hotly contested set of recently-concluded negotiations between NAAE and PPQ Management occurred over a plan to institute a 0300 shift at Ponce, a small airport duty station in Puerto Rico. With only five full-time employees assigned to Ponce, local management has for years been covering with call-out overtime all early-departure flights (at 0400) from the Ponce airport. Although the reasons for change are disputed, Management a year ago elected to discontinue covering the 0400 flights at Ponce, PR with overtime and instead planned to provide pre-clearance services with a 0300 shift, manned by two PPQ Technicians and one PPQ Officer.

A regular 0300 shift imposes significant hardships on most workers and their families that simply can not be ignored -- although local management at Ponce tried to do so. NAAE pitched in to help local union representatives there negotiate an agreement. The principal objective was to force Management to take into account the unique family-care needs associated with an eight-hour tour that begins at 0300. Management planned to start that shift in the fall of 2005, but, as a result of the completed negotiations, the shift will not become fully staffed and implemented until February 2007. The negotiations also resulted in agreement requiring Management to provide special accommodations for the personal and family needs of three employees who would otherwise be unduly inconvenienced and burdened if forced to work the 0300 shift five days a week. Other negotiated provisions resulted in agreement on how to replace employees assigned to the 0300 shift who take annual or sick leave or are on TDY assignment.

All in all, the employees at Ponce report they are satisfied with the negotiated settlement. The two Technician positions on the 0300 shift will be filled on a permanent basis by new-hires who applied for their jobs knowing they would be permanently assigned to the 0300 shift. The Officer position will be rotated on an every-other pay-period basis among the existing Officers at Ponce.

B. Ponce, PR Employee Grieves Management's Unilateral Changes in Her Performance Standard.

A Ponce, PR Technician who should have received an "outstanding" overall performance rating for FY 2005 was given only a "superior" rating when her manager, during her year-end meeting to review her performance, advised the Technician he was going to disregard one of her existing performance standards in a "critical" performance element. After deleting this standard (number of interceptions) and as a result of this eleventh-hour change in her performance element, he rated her as only "fully successful," depriving her of being graded "exceeds" on that element. This change, in turn, had the ultimate effect of preventing her from receiving an overall "outstanding" rating. Those Ponce employees with outstanding overall ratings in FY 2005 would have received significant cash awards or QSIs (quality step increases).

The Ponce employee has filed a grievance because of this unilateral change in her performance element. The Agency has denied her grievance at each level, NAAE has

invoked arbitration, and the matter is now pending before an arbitrator. The arbitration hearing has not yet been scheduled.

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CONVENTION!

It is not too early to start thinking about our 2008 convention. The NAAE Executive Committee has selected the Southeast as the area for our convention and favor Florida. We need volunteers for final site selection and the special coordination required to make our convention a success. If you would like to be involved, call Mike Randall on 808-861-8449.

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PPQ E-AUTHENTICATION NEGOTIATIONS

On July 13 of this year PPQ and NAAE signed an agreement concerning the use of the eAuthentication System, which validates user identities for access to agency on-line programs. This System was introduced over two years ago when the agency brought out AgLearn, the on-line training program. NAAE was alarmed at the huge amount of personal information required by the eAuthentication System just to issue the user id and password: Why couldn't those be given to the employee by his/her supervisor, or emailed through Lotus Notes, or through the US mail, without all that stuff about pay and mother's maiden name?

As the agency proudly states in one of the provisions of our agreement, they don't elect to negotiate permissives. This refers primarily to their right to determine the technology, methods and means of getting things done: Their decision to use eAuthentication instead of the US mail is not open to negotiation. While our Labor Relations Statute permits negotiating in this area, it is only at the election of the agency, and, under this administration in particular, there will be no negotiation of permissives allowed.

The agreement does address many of NAAE's concerns (per the agreement, you all should have received this in your Lotus Notes email by now). The agency did reduce the amount of personal information collected and stored by removing the requirement to use mother's maiden name. The agency has agreed it is bound by the Privacy Act, including permitting employees to review their personal information in the system and take steps to correct or update it. The agency has agreed to notify both the union and affected employees in the event a security breach is likely to have a negative impact; and will take prompt steps to correct problems. And the agency will provide the Union notice and opportunity to negotiate if substantive changes are made to the system.

There do remain concerns of the Union which we have attempted to address through dialog with the agency:

* Identity theft and security of private information have been big issues during these negotiations. While the agency has agreed to abide by the Privacy Act, it still hasn't

complied with the provision requiring it to publish in the Federal Register certain details about its new system (called by the Act a "System of Records") including how the agency stores, controls, retrieves and allows individuals access to review their own records. We asked the agency to give us courtesy notice when it publishes. So far it has declined (see agency comments below).

* We've been concerned about the amount of personal information required by this system. The Privacy Act seeks to minimize the collection of personal information to only what is "relevant and necessary". USDA decided not to simply mail the user id and password to each employee but to go through an elaborate, information intensive, electronic "handshake" with the NFC database to verify the identity of the applicant over the internet. As stated above, the constraining rules of negotiating left most of this complex System untouched. Interestingly however, on the same day we signed the agreement USDA issued a letter to all employees claiming it was reviewing all data systems "**to minimize the amount of personal information in each system**..."

* Private contractors are involved in running the System. The agency declined to provide any information about them; whether they are individuals supervised by agency managers or companies actually controlling or running all or part of the System, or even what they do. The only reassurance here is that any private contractors are bound by the same Privacy Act requirements as is the agency. As we are in a world where reports of personal information theft are becoming routine, and the assessments of government performance in this area are not good (the House Government Reform Committee has given USDA failing grades on information security for the last 5 years), a little honest transparency of at least what role these contractors play might have been reassuring.

The agency was invited to respond to these issues in this newsletter, having been given specific questions with supporting documentation. Here is the sum total of its response:

"APHIS considers personal employee data to be just that, "personal." Accordingly, the Agency will continue to take steps to protect any personal data gathered in the course of business and where practical, to seek ways to eliminate the need for personal data collection. Specifically we are looking into systems or tools that will use less "personal" data to accomplish the same tasks."

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Questions and Answers About the Career Path for PPQ Technicians

Recently, NAAE's Executive Committee was asked to field a number of questions regarding the career path for PPQ Technicians. We have written this article to dispel some of the myths and bring some clarity as to why the path from Technician to Officer in PPQ is often a difficult one.

ANNOUNCEMENT LEVEL

A number of you have observed that recent announcements for PPQ Officer positions have been made only at the GS-11 level (and not at the traditional GS 5/7 opening level), placing application out of the reach of the PPQ Technician. This announcement limitation is only **temporary.**

NAAE has spoken with Agency officials who have explained that the GS-5/7 list has been only temporarily abolished. This action has been necessary because: (1) the Agency was not issuing the list; and (2) any future use of the list had to be stopped in accordance with Office of Personnel Management (OPM) mandate during the transition to the GS-401 classification. The Agency thus must discontinue this type of hiring until new classifications and qualifications are written to comport with the broader standards required for the GS-401 series. (As you may know, OPM has abolished the GS-436 classification and ALL GS-436 employees will be reassigned to the GS-401 series.) The Agency re-writing and classification process takes time, and the Agency has urged patience during this period. While the Agency has given NAAE no specific anticipated date for return to GS-5/7 hiring, the Agency assures NAAE this will happen soon.

Rest assured, NAAE supports the elevation of the entry level for the PPQO position to GS-7. We have urged the Agency to raise this level for years. Most other agencies who hire for positions like ours have always used GS-7 or GS-9 as the entry level. NAAE has long maintained that Officer hiring at the GS-5 level is abusive of employees, often taking advantage of job seekers at their most vulnerable time.

PROFESSIONAL EXPERIENCE

Many Technician applicants have expressed frustration over how their experience is credited in their application for the Officer job.

The qualifications standards used for Officer hiring pose complex issues of concern to aspiring Technicians as well as Officers. There are a number of OPM-set qualification objectives one must surmount in order to promote from a Technician to a professional Officer position, and some of these qualifications are difficult to put your arms around.

Of the most discouraging is the requirement for *professional* experience at the next lower grade level. The difficulty arises, as you know, when an applicant from the Technician ranks seeks to substitute work experience for years of college work. Unfortunately, OPM and the Agency do not consider Technician experience *professional* experience. While NAAE strongly disagrees with this qualification criterion, NAAE must recognize that the Agency has the right to establish the criterion, and OPM regulations require adherence to specific qualification criteria for professional positions (*e.g.*, educational requirements and/or professional experience). We cannot negotiate the criteria down.

What NAAE can do and has done is to strongly encourage the Agency to cultivate and make better use of its dedicated corps of permanent Technicians—members of our bargaining unit-- by turning to alternative hiring methods and promoting increased use of Career Enhancement Programs. In the end, it is exclusively a Management call as to how and whom it hires. The Statute, the Civil Service Reform Act, makes it so.

TECHNICIAN to OFFICER IS NOT A CAREER LADDER MOVE

A number of you have asked why there is no "career ladder" for Technicians, a fair question that deserves an answer.

First, we'd like to clear the air on the current misunderstanding of the term "Career Ladder." As defined in Federal Labor Relations Authority ("FLRA") caselaw (these are the rules we work under), "A career-ladder promotion results from an agency's placement of an employee in a position classified to permit advancement to a 'target' **grade** without competition through continued satisfactory job performance." The target is a grade and not a position. You are most familiar with this concept in the GS-436 5-7-9 or 7-9-11 **grade** progression. The grade changes-- and not the *position* -- as the employee moves up the ladder. No competition is required once you are in the position. Satisfactory performance is required. For this reason, there never has been a career ladder for Technicians to become Officers. Opportunity to apply for merit promotion---yes, but not a career ladder move from Technician to Officer.

The law regarding merit promotion requires that **all** applicants for an Officer (specialist) position must compete for that position. The hurdles a Technician must clear to become an Officer have always been the availability of the position, the qualifications of the individual, the keenness of the competition, and the ability of the individual to substitute experience when he or she can not meet the minimum qualifications. The last stepping stone is the hardest to fulfill. Again, experience gained as a PPQ Technician counts as *non-professional* experience in the OPM qualification system, while it is *professional experience* that is required to meet the qualification when an individual seeks to **substitute** experience for **full** education. This experience substitution qualification is the most heartbreaking qualification to understand, but this provision has always been enforced in the same way. While career enhancement programs (these also involve the merit promotion process) are available (and perhaps the only option available in

obtaining professional experience) to assist those who cannot meet minimum qualifications, the Agency cannot be compelled to use these programs.

PRE-EMPLOYMENT TESTING and the CONDITION OF EMPLOYMENT POLICY

Technicians have asked about the pre-employment test and Management's application of the Condition of Employment policy to employees undergoing a probationary period.

PPQ instituted a pre-employment testing policy several years ago. A test has been given to all "case exam" (off the street) applicants for the PPQ Officer job. The testing policy goes hand-in-hand with the Condition of Employment (COE) policy implemented at the same time. The COE policy requires all new Officers (including successful existing career PPQ Technician employee applicants) to enter the job as probationary employees.

NAAE was permitted to briefly examine the pre-employment test when it was first proposed. We saw a number of logic and math questions that might provide a good predictor of *some* skills required to be a good Officer; however, we never agreed with Management's use of raw score of this test, combined with any Veteran's Preference ("points"), as **sole** criteria for ranking individuals on the hiring register. Regrettably, this hiring practice is legal and is Management's call. The Statute says so.

Recently, the testing policy has been suspended; however, the Agency hasn't been hiring many Officers either.

NAAE has not been notified of any planned reinstitution of the pre-testing requirement. While we do not like the test as the Agency has administered it, it is Management's prerogative under the law to set qualifications for its positions. The test has been used in the past as a qualifying criterion. We understand OPM has approved the pre-employment test and has cleared its use from an EEO compliance perspective. NAAE Executive Committee members have offered to take this test in a controlled environment as "guinea pigs" in an attempt to validate (or invalidate) the test and to answer some of our questions (and yours) about the test. Management has flatly declined our offer.

Some individuals may need specific accommodations in order to take the test. NAAE has always supported the right of individuals to seek special accommodations in test-taking. These accommodations should be requested before taking the test. NAAE has not received requests for assistance in securing accommodations when the tests have been administered in the past; however, NAAE will offer such assistance if and when requested.

It is our understanding that the Agency has instituted the Condition of Employment (COE) policy allegedly in order to increase the quality of Officers hired. The Agency wants to hire all new Officers on "case exam" announcements---from the street and not

from career status employees. The passing of NOT (BAST) as a condition of employment is nothing new. The Agency retains the legal right to terminate a probationary employee within a year if things don't work out. This COE policy and the pre-employment testing stem from Management's right to hire and set qualifications under the law. The Statute gives no union the negotiation tools to end or substantively change these policies.

Management has full discretion to determine during the probationary period whether to retain the new (probationary) employees under criteria of its choosing, provided it does not commit a Prohibited Personnel Practice in its decision to terminate them. We would be interested to learn if any employee believes the Agency has committed a Prohibited Personnel Practice in the implementation of its COE policy.

WHAT NAAE HAS DONE TO SEEK ADJUSTMENTS TO THESE POLICIES

NAAE has always vigorously opposed harmful hiring and promotion policies and has pointed out the inequities in these hiring practices whenever we have entered into consultation with Management. Some of these more recent efforts include the following:

> NAAE brought up COE testing, the professional experience requirement, Career Enhancement Programs with Associate Deputy Administrator, Paul Eggert, at our recent Salt Lake City Convention on May 3, 2006;
>
> NAAE's Executive Committee asked new Labor Relations Chief Elizabeth Blackwood about pre-employment testing at an Executive Committee Meeting in San Antonio on February 14, 2006. At that time, we were informed of the suspension of testing;
>
> The NAAE Executive Committee discussed COE and the professional experience requirement with the then Chief of Labor Relations, Dennis McPeters, at an Executive Committee meeting in Rapid City, ND on May 24, 2005;
>
> NAAE discussed the COE testing policy and the difficulty permanent Technicians would encounter in achieving Officer positions during an October 2004 Executive Committee meeting in Seattle during a conference with former LR Chief, Thomas Valenti; and
>
> Members of NAAE brought up the difficulties for Technicians during our consultation with Paul Eggert during our June 6, 2004 convention session in Atlantic City.

These hiring issues are among the most challenging we face as a Union. The challenge is that the policies and practices we seek to change are precisely those the Statute gives

Management total and unfettered discretion to establish, by law and government-wide regulation (*i.e.* right to hire, classification, and position qualifications). While we, as a Union, can and always have approached these issues through the slim arena of what can be legally negotiated, there will never be changes in hiring practices and policies that are acceptable to NAAE unless the Agency elects to listen to its employees and really wants to change. Our course of action remains the same — to be heard on these issues by bringing them up at every opportunity and in every venue. Perhaps, some day, the Agency will understand how truly anguished we are over these policies and will realize how these policies hurt the Agency and its mission in the long run. Occasionally, we are successful on this type of issue. It depends upon who is listening in Riverdale.

How to Join the Union?

Members and dues… the life force of the Union. The health of the treasury determines how much, how hard and what we can fight. Decisions upon what to arbitrate and when to untether the falcons of justice (or if to just settle for us rag-tag-band-of-ne'er do wells) depends upon how much moolah is in the kitty. So…you have to JOIN the Union and… you have to do it RIGHT. You might not know this, but as a member-- it's in the by-laws, it's your obligation to tell other folks about the Union and encourage membership i.e. MAKE MORE MEMBERS.

How to File Those Forms

1. Get Form SF-1187 Request for Payroll Deduction
ask any National officer, cut out or photocopy from THIS newsletter, print it from our website
HTTP://www.AGInspectors.org

2. Fill out 1.) Name, 2.)S.S.# 4.) HOME Address – We need your HOME address ONLY! It is against the law for us to send an election ballot to your office. Remember this is our only chance to get your address right for elections and newsletters. 5.) Agency-BE SURE TO LET US KNOW IF YOU ARE IN PPQ OR CBP—We ain't always psychic!
SECTION A—Put down your branch if known, otherwise write the name of your work station. Currently dues are $7.50 per bi-weekly pay period.
Please do NOT sign authorized signature—that's for the NAAE National President.
SECTION B—This is for you! Please sign and date (preferably in blue ink)
The Agencies will not process a form to withdraw from your paycheck without an ORIGINAL signature (would you have it any other way???)

3. Give your form to a National officer or see that the form gets mailed to the NAAE National President for processing. His or her address is always on the back

of the newsletter (as well as all of the rest of your NAAE National officers)—Welcome to NAAE.
Remember—No need to kill a lot of trees. We only need ONE original form to process a dues withholding request. That old system of carbons and triplicates is history and is just a bunch of environmental pollution- Don't be a dinosaur

Commun Misteaks:

Some folks have tried to send their dues forms directly to Management for processing. This isn't supposed to result in withheld dues, but sometimes it does. Management is not supposed to process any forms without an authorizing signature from the NAAE National President.

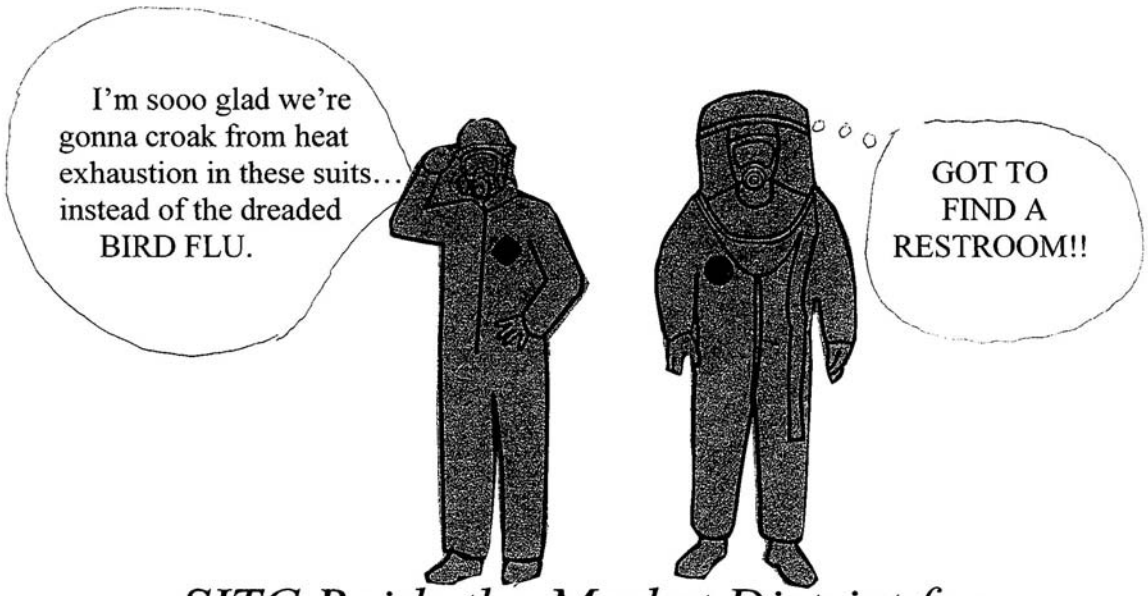
Bad things that happen to unauthorized forms:

1. Management hoards the unauthorized forms for about six months and then sends them back to us unprocessed for "no signature".
2. Unauthorized forms are never processed, get thrown away, or otherwise "disappear".
3. Management processes the dues withholding, NAAE never knew you joined, we lose our once in a lifetime opportunity to get your home address because we never see the form, and you are angry-- you can't vote and never get a newsletter.

There are plenty of other ways to mess dues withholding up, but we won't print them all here to avoid giving away too many of our best held secrets. Just keep to the simple directions above and we should be able to scale most any wall USDA (or Homeland) can build. Happy recruiting.

IT IS NOT "TOO LATE" FOR CBP FOLKS TO JOIN—WE ARE YOUR UNION UNTIL THERE IS A LEGAL ORDER TELLING US WE ARE NOT. DON'T WORRY, IF THE WORST HAPPENS, YOUR WITHOLDING WILL CEASE AUTOMATICALLY—NOTHING FOR YOU TO DO.

HELP OUR LEGAL EFFORTS WITH YOUR MEMBERSHIP!



SITC Raids the Market District for Avian Influenza

?

No! This is the beginning. We Have Just Begun to Fight!

Now More Than Ever! Encourage Your Co-Workers to Join! Strength In Numbers!

YOUR NATIONAL NAAE REPRESENTATIVES

(Your Input & Feedback Is Most Welcome)

Standard Form 1187
Revised March 1989
U.S. Office of Personnel Management

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 *(Print or Type-Last, First, Middle)*	2. Employee Identification Number *(SSN or Other)*	3. Timekeeper Number

4. Home Address *(Street Number, City, State and ZIP Code)*	5. Name of Agency *(Include Bureau, Division, Branch or Other Designation)*
	☐ USDA-APHIS-PPQ ☐ DHS-CBP-AQI PLEASE CHECK AGENCY BOX!

Section A-For Use By Labor Organization

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

National Association of Agriculture Employees Branch _____ Location_____

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). *(Strike out whichever period is not appropriate, based on arrangement with the employee's agency.)*

Signature and Title of Authorized Official	Date *(Month, Day, Year)*
NAAE National President	

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):

NAAE

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 *(Month, Day, Year)*
Please use colored ink submit original if desired, make copies for yourself	

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

Save a tree!! Just Send Us 1 original ☐

1-Age x **Copy** **2-Labor Organization Copy** **3-Em** x **ee Copy**

PLEASE MAIL ALL DUES WITHHOLDING FORMS TO NAAE NAT'L PRESIDENT FOR SIGNATURE

Mike Randall, **President**
P.O. Box 31143
Honolulu, HI 96820-1143
3375 Koapaka St. Suite G-330
Honolulu, HI 96819

Work: (808) 861-8449
Fax: (808) 861-8469 U
Home: (808)239-4393
Email: Mikeran@aloha.net
Pager: 888-631-3249
Please call AFTER 0700 Hawaii Standard Time!

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If you are faxing or emailing material that must be handled with discretion, it is advisable to call recipient first. U MEANS UNSECURED FAX MACHINE

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

Sarah Clore, **Secretary**
9080 Torrey Rd.
Willis, MI 48191

POSTMASTER: ADDRESS CORRECTION REQUESTED – PLEASE DO NOT FORWARD