

NAAE NEWS FLASH!

NATIONAL ASSOCIATION OF AGRICULTURE EMPLOYEES

PERFORMANCE ELEMENTS UPDATE!!



Performance Elements Changes – What You Need to Know

On October 29, 2018 after the new fiscal year began, NAAE received Notice of Changes in the bargaining unit positions' AD 435Es. That is the foundation document against which you are evaluated to support your Mid-Year and EOY performance appraisal. I must admit that I haven't always paid attention to them. I know how to do my job, I've been doing it a long time, and I think I am quite successful in my position. But this year, I am looking at them. Why? Because this year each bargaining unit member is mandated to turn in quarterly performance accomplishment reports, and your report had better have items listed that has something in common with what's on the 435E for FULLY SUCCESSFUL and if you're going for it – EXCEEDS FULLY SUCCESSFUL in each element.

Supposedly – *in management's opinion* - the changes are minimal. But it could seem quite startling if you don't usually pay much attention to them. For example, in almost every AD 435E Safety & Health element, to be exceed fully successful you might choose to write an article and have it published in the PPQ FO Safety and Health Newsletter that is sent twice a year. You do the math. Over 1000 BUEs represented by NAAE, and if each one submits an article – each newsletter could contain well over 500 articles. I don't see that happening, do you? Plus whether it is published or not is outside of your control. That's the unreasonableness found in some of the AD 435Es. Need another example? Look at your Element for Data Quality, Data Management and PII/CBI. To exceed fully successful in it, you could "develop a PPQ-level data management system improvement that is adopted." I can't wrap my mind around what that might refer to. I just know it's unlikely to be something I might do. How about you?

Here's what YOU CAN do. In the briefing we had with PPQ, Management stressed several times that these examples of **meets and exceeds Fully Successful** are just that – **EXAMPLES**. It's the not be all and do all that could and likely should apply to you as an individual. Please - when your supervisor presents yours, take the time to have an honest and full discussion and ask that real life examples of what you do and what you can/would like to do are entered on yours. Make it your own AD 435E and take charge of your performance appraisal!

UPDATE—GS 401 Arbitration

In January 2018, NAAE and PPQ Management submitted their dispute (known as the "401 Grievance") to a third-party arbitrator to decide whether 7 Bargaining Unit Employees were entitled to keep their GS-11 jobs despite a Management error in crediting their college courses 20 + years earlier when they were hired. The Arbitrator's recent decision ruled in favor of the NAAE grievants. PPQ appealed the decision and lost! The primary grievant in this arbitration is due to receive promotion to GS-12 and back pay for 3 years. NAAE's attorney has petitioned for full recovery of legal fees and expenses.

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CONDITIONS OF EMPLOYMENT

The Federal Labor Relations Authority in a recent decision has clarified (and narrowed) what federal unions may legally negotiate with their agencies on behalf of bargaining unit federal employees. The statute (5 U.S.C. § 7102) provides that unions may negotiate only over agency-initiated changes in “conditions of employment.” The statute (5 U.S.C. § 7103 (a)(14)) defines “conditions of employment” as “personnel policies, practices, and matters ... **affecting working conditions**.” For years, Labor and Management have considered “conditions of employment” as substantively synonymous with employee “working conditions.” FLRA now makes clear, in *U.S. DHS, CBP El Paso, TX and AFGE Nat’l Border Patrol*, 70 FLRA 501 (2018), these two terms, while related, are materially different: Congress has limited negotiations to “conditions of employment,” and certain matters, always considered to be negotiable as changes of condition of employment, are no longer deemed negotiable because they merely affect working conditions.

For example, suppose a PPQ Officer’s primary duty is to inspect and clear United flights departing at various times during the Officer’s tour of duty; the Agency receives notice from American Airlines that it will have three new American flights scheduled to depart during this Officer’s tour of duty; and the Agency issues a directive, ordering the Officer to clear those three new American flights in addition to the original United flights. According to FLRA, this Agency notice does not announce a negotiable change in conditions of employment for the Officer, even though the change promises to have a big impact on his or her working conditions as an employee.

FLRA currently takes the position that increasing the Officer’s daily workload does not change that Officer’s conditions of employment: he or she continues to be tasked with clearing flights during his/her regular tour of duty. It does not change the nature or type of duties the Officer will perform. Even if the Agency directive had also announced a change in “how” the Officer is expected to perform these inspections, FLRA takes the position this change is not a change in conditions of employment even though it may be a change in the Officer’s working conditions. As a result, the Agency has no obligation to notify the Union in advance of this change or to negotiate with the Union over the change, either as to its substance or as to its impact and implementation.

This very narrow new interpretation of “conditions of employment” overturns years of precedent at FLRA and represents another major step in the Trump Administration’s efforts to reduce the rights of federal employees.

ELECTION COMMITTEE

NAAE is looking for volunteers for the election of officers on the Executive Committee.

The elections will be held next year in 2020.

Nominations ballots are typically sent in the fall of the preceding year.

NAAE will need an election committee made of at least three (3) bargaining unit employees (BUEs), belonging to the same work unit.

The responsibilities of the Elections Committee are as follows:

1. Select a Chairperson.
2. Rent a PO box specifically for this election.
3. Prepare Nomination Ballots.
4. Confirm Nominees’ willingness to run for office.
5. Prepare and print Nomination and Elections Ballots - enough for all members in good standing to receive one.
6. Stamp and address envelopes.
7. Mail ballots to BUEs.
8. Collectively, tally and count ballots.
9. Notify the Office Winners and NAAE EC of the results.
10. Chairperson to attend the **entire** NAAE Convention, at NAAE’s expense, in 2020 to report on the elections’ results.

2020 Election Time Line

Nomination ballots go out 4 months prior to the convention. *The executive committee will handle this. Before the nomination ballots can be mailed, we need you to provide a PO Box address for them to get sent to.*

Nominations collected 2 months and 3 weeks prior to the convention. *As the nomination ballots come in, you can open them and keep a running tally so that it's not a bunch of work at the end.*

Election ballots mailed 2 months (60 days) prior to the convention.

This part is done by the Elections Committee. NAAE has ballot templates that will be sent to you. The Executive Committee would like to see copies of each ballot (one for WR, one for ER) before you send them out just as an extra set of eyes.

Election ballots must be received 1 month (30 days) prior to the convention, *These ballots cannot be opened ahead of time, that's what the three of Elections Committee will sit down and count the ballots. The ballots will be returned within several envelopes, you can, and the Executive Committee recommends that they are validated (local # & last 4 of ss#). The Executive Committee will send you that information to match up) as they come in. That way on the day of counting you just have a pile of unmarked envelopes to open and add up the votes.*

Election ballots must be counted 29 days prior to the convention.

Election results must be announced 25 days prior to the convention.

The Elections Committee Chairperson will send the Executive Committee the final results, including number of votes for each person which includes write-ins. There's always write-ins, and we'll post the newly elected EC on the NAAE website.

UNIFORM TIDBITS

The PPQ Uniform Committee met 6/10-6/11/19 in Philadelphia PA. We were hosted by the Philadelphia work unit, and we would like to extend to them a big “**thank you**” for all of their hospitality. Choosing Philadelphia allowed us to not only meet with the work unit at the port, but also gave us the opportunity to meet with the SLF Program in Easton, PA. These meetings provided face to face interaction with uniform users, and allowed us to gather valuable feedback from the field on what's working/not working, what's good and not so good, with the Uniform Program and the latest offerings. Some of the takeaways were the need for more women's sizes, better durability in some items, and as usual, better footwear. We reiterated the constraints of the Trades Agreements Act which precludes a lot of options and suggestions we receive from the field, especially with footwear, and makes finding offerings a real challenge.

One interesting topic that came out of these meetings was the perception that if a individual's uniform allowance isn't completely spent at the end of the FY, somehow or other HTC pockets the remainder. Nothing could be further from the truth, HTC is only paid when items are purchased. If no uniform items were purchased over the course of a year, then USDA would not have spent a cent, and HTC would be very unhappy.

In other Uniform Program news, the PPQ Uniform Policy was just released, it was developed to align PPQ with the soon to be released MRPBS Uniform Policy, and to enact the recommendations of the APHIS Uniform Work Group. The Uniform Work Group was formed on the recommendation of the Program Leaders Group (PLG) to implement the decisions of the PLG on uniform options across APHIS. Basically each APHIS program (PPQ, AC, IS, VS) must create a policy that dovetails with the MRP policy. Be on the lookout for the new Uniform SharePoint, featuring lots of good information as well as a Uniform Exchange. Also stay tuned for new offerings coming soon, as we continue to try to provide the best uniforms possible to our users.

Don Anderson—Uniform Committee

FOREWARNED IS FOREARMED:

VIEWING PORN AT WORK IS GROUNDS FOR DISMISSAL

Nothing these days gets the attention of the Agency's new Labor Management Employee Relations ("LMER") unit more quickly than evidence purporting to establish that a PPQ employee has accessed his/her government computer or cell phone to view and/or download sexually explicit material, especially on government time. This is a hot-button issue for the Agency. Within the past year, the Agency has taken steps to discipline roughly six PPQ employees for viewing porn on their government computers, some on personal time, some on government time. The more recent cases have come under the direction and control of LMER.

NAAE has been informed that Agency investigators, uncovering evidence of an employee accessing porn, currently push the matter to LMER staff to pursue. In a change from long-established policy, LMER now possesses the authority to formulate the initial letter to the employee proposing discipline for this transgression. In the past, this authority resided with local officials who may or may not have consulted with or sought the guidance of the Agency's Employee Relations staff. Following the employee's oral conference and written response, addressing and seeking to rebut the accusations and proposed discipline, LMER staff authors the Agency's final decision-letter, although issued under the signature of the Agency's "deciding official," usually the employee's first- or second-line supervisor but in some cases the head of LMER itself.

In this manner, LMER keeps tight control over the entire process and assures its new zero-tolerance policy towards employees caught viewing porn is implemented and strictly enforced. This new LMER policy, in a departure from past dispositions of improper computer/cell phone usage cases, is unquestionably designed to result in the removal of the offending employee from the Agency for the very first offense involving using the government computer to access the Internet to view porn, no matter what the surrounding circumstances. This harsh policy essentially rejects the concept of taking into account mitigating factors, such as years of service, absence of prior discipline, quality of work performance, number of awards won, glowing written recommendations and commendations from supervisors, and pressures of personal or family health issues causing or tied to the inappropriate computer use.

This "one-and-done" philosophy of LMER's contrasts sharply with the Department's long-standing general policy of pursuing progressive discipline. It contradicts the Collective Bargaining Agreement between NAAE and the Agency, known as the "Green Book." Article 24 in Section 3 of the Green Book states, "Disciplinary actions ... will generally be progressive in nature." It conflicts with USDA's own published Table of Penalties. That Table authorizes the Agency to select from a broad range of approved actions as the appropriate penalty to impose for an employee's offense related to accessing porn on the government computer – from a letter of reprimand to removal for the first offense and from a five-day suspension for any subsequent offense to removal. The Agency's LMER gets around these provisions mandating application of progressive discipline by claiming employee removal is not outside the maximum of what the Table of Penalties permits for the offense charged, even for a first offense.

Bargaining unit members must be extra vigilant to ensure they never use their computers or cell phones in this inappropriate way. They must remember that as PPQ employees they have given up their expectations of privacy when accessing their government computers and arguably have expressly authorized the Agency to monitor their computer use. The Agency's forensic analysts do not need to seize your government computer in order to determine what you have been viewing. Current IT technology enables them to do so remotely, while you are sitting at your desk, and you may not even be aware your computer-viewing habits are being monitored.

In the event an Agency manager, investigator, or other official ever contacts you to question you about your computer (or cell phone) use, you should remember you are entitled to request an NAAE representative be present to assist you during the official questioning and to advise you in responding to any proposed discipline stemming from that investigation.

HR BROADCAST

When you are considering corrective action for an employee's misconduct, sometimes it's appropriate to think outside the box of traditional disciplinary actions. Consider this case:

THINK OUTSIDE OF THE BOX

Chris had been a model employee of the agency for over 20 years. Last month he experienced several stressful personal situations, including a divorce. He went to his physician and was prescribed medication to help him sleep. He mistakenly took one of the pills an hour before his tour began, didn't hear his alarm clock and slept through his tour of duty. He failed to call in or provide an explanation as to why he failed to report. Chris was charged with 8 hours of AWOL and given a letter of reprimand. Chris' incidents of AWOL continued, and he served two suspensions for his continued misconduct. Chris failed to report to work last week and was charged with 40 hours of AWOL. The USDA Guide for Disciplinary Penalties indicates the appropriate penalty is removal. This time Chris opens up to you and tells you about his divorce and the sleeping pills. He also accepts responsibility for his misconduct and states that he would like to contact EAP to help him straighten up his act and save his career. How would you correct Chris' behavior?

When you contact your Employee Relations Specialist, he/she will probably suggest a Last Chance Agreement. It's appropriate to consider a Last Chance Agreement (LCA) if:

- The employee's misconduct warrants removal.
- The employee admits to, and accepts responsibility for, the misconduct.
- The employee claims a disability, personal problem, or other mitigating factor as the reason for, or as a contributing factor in, his/her misconduct.
- The employee shows potential for rehabilitation.
- The employee agrees to waive all rights to file a grievance, appeal, discrimination complaint, or other third-party action.

In our example above, the agency would more than likely conclude that Chris could be a productive employee again. He has admitted to and accepts responsibility for his misconduct, and shows a potential for rehabilitation. A mutually agreed upon LCA will often accomplish the objectives of both the agency and the employee. With the agency providing Chris an opportunity to prove that he can be a productive employee, combined with some assistance from EAP, Chris could save his career. The agency benefits by keeping an experienced employee like Chris, while avoiding the administrative costs associated with traditional discipline and the appeals and/or complaints that follow. In addition, communication between Chris and his supervisor will more than likely improve due to a demonstration of trust and goodwill.

Today most agencies encourage the use of alternatives to traditional disciplinary action to reduce the costs/burdens generally associated with such action, to encourage the rebuilding of relationships between employees and supervisors, and to provide employees an opportunity to demonstrate accountability for their actions. In addition to last chance agree LCAs, possible alternatives to discipline include (1) holding a suspension action in abeyance for a specified period of time (if the employee does not commit any further misconduct during this period, no action is taken); (2) LWOP in lieu of suspension; (3) annual leave donations; (4) a letter of apology to the affected parties; and, (5) community service related to the employee's offense.

Your Employee Relations Specialist will provide advice when you are considering utilizing an alternative discipline agreement, and will consult with you when drafting the agreement offer.

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PLEASE NOTIFY THE SECRETARY OF ADDRESS CHANGES PROMPTLY!

Contact the EC

If you have questions or problems concerning -

- Changes in Working Conditions
- Computer Usage
- Being put on a Performance Improvement Plan (PIP)
- Representation Rights
- Disciplinary Issues
- Vol / Lateral Transfers

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NAAE won't rest until there is justice and respect for every bargaining unit position .