

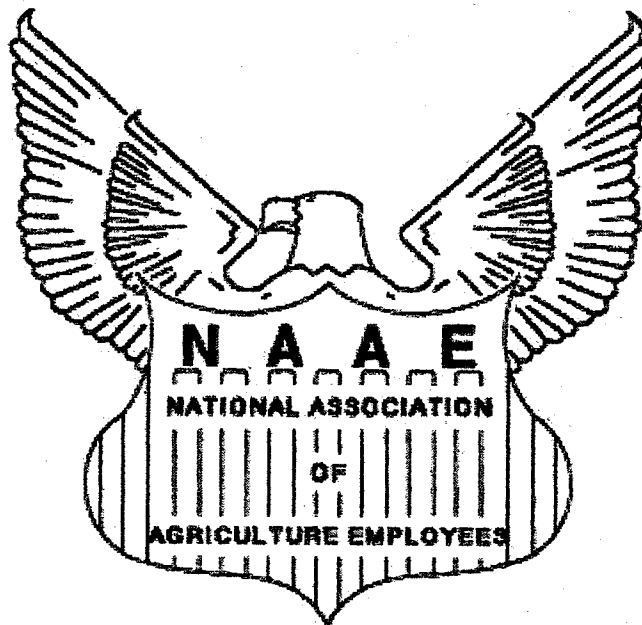
Date: July 2001

Issue #62

# N.A.A.E.

National Association of Agriculture Employees

## NEWSLETTER



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**N.A.A.E.**

**National Association of Agriculture Employees**  
Newsletter Issue No. 62 July 2001



## **A Message From Our President**

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*Mike Randall*

**D**owngrade- Flack-R Us,

Perhaps you've been looking for someone on whom to pin responsibility for the downgrade. So have I. We at NAAE have received correspondence from a few officers critical of our actions intended to lessen the effects of MANAGEMENT'S downgrade.

The first thing someone should consider in investigating who to blame (if one really wants to do this) is the reliability of the sources of information. I have had communications with a number of individuals whose sole source of information is the Agency and not the widely-available information release NAAE issued shortly after negotiations concluded. (For those who did not see the release, we reissue it here in the newsletter. We are sorry if you did not receive the release as it was distributed as quickly and timely as possible by e-mail and fax.)

If your sole source of information is PPQ and did not include NAAE, I suggest your lot is no better than the arriving air passenger who asserts that the vendor from whom he bought the salami told him it would be "O.K." If you EVER have a question about what is going on or have an idea to share, the Executive Committee of NAAE is available to field your call. This is what you elected us to do. The numbers and addresses are on the back of this newsletter. We try to get back to everyone, and as you see by the contact numbers, we make ourselves very available. (Just remember some of us in the West are sleeping when half of your day in the East is done.)

Several bargaining unit members wrote that they were very disappointed because they thought "NAAE would fight the downgrade to the last man [sic] (we have women too!)."

NAAE has used all of the legal means available to us under the law to negotiate a starting date and acceptable terms for saved grade and pay. We are not short of gray hairs from this event. If you feel the boat is taking water, do not hesitate to offer up a bucket—just be willing to use it. I can't believe that I am the only person in PPQ that doesn't have a relative in Congress (hint hint). The downgrade is something MANAGEMENT decided to do, and is Management's right to do so under the law. No union could have stopped this downgrade. Other NAAE actions

aimed at mitigating the downgrade continue—including getting some of the GS-11 job descriptions back.

Some writers have asked why the downgrade couldn't have been handled by attrition. The answer is simple: MANAGEMENT didn't want to. This downgrade is in retaliation for grievances (which we have been winning) filed since the early 1990s by GS-9s performing GS-11 work without the accompanying pay. These employees have the statutory right to grieve to recoup the pay. You need a Union to enforce this right to grieve.

We were involved back in 1988 in all the double talk and bull hiding behind "Employee Utilization" that MANAGEMENT fed us (for 5 years) until MANAGEMENT was shamed into providing us a Port GS-11 Job Description SJ-8227 first filled in 1993. Some managers sincerely believed in the upgrades, and we thank them for this support, but largely these supporters have departed the Agency, to be replaced by people less caring of the employees who support their jobs. At least the people who were promoted in 1993 were fully paid what they are worth for ten years (until November 2003 at which time the yearly pay raises decrease while GS-9 Step 10 catches up—this may take the rest of their careers.) I, too, am losing my 11. Before speaking ill of the Union, consider the extra pay you received for the past 8 years and will receive for the next two years that you would not have received without NAAE's diligence. We, too, are sorry for the bulk of the bargaining unit who will never see a GS-11 because the Agency decided to retaliate, rather than to live up to B. Glen Lee's commitment to upgrade the journeyman level to GS-11.

Don't quit now; the fight's just begun. We didn't do it. Let THEM know you are displeased.

IT'S MANAGERMENTS FAULT. We have taken the steps to let Congress know. You should, too!

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## A Look Back...

*And an Apology*

Mike Randall

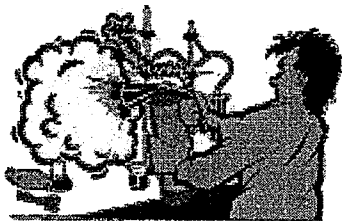
I humbly and profusely apologize for the extreme delay in our last newsletter and beg your forgiveness. Publishing problems and a shortage of Executive Committee members were the least of our problems.

We were at, and continue to be, at battle.

When fruit is rolling out of baggage at the belts and we're understaffed, we don't stop

to fill in a data survey form; we fill the seizure buckets. When we're on regulatory and we see an uncovered fruit truck leaving a quarantined area, we know its not time to stop for lunch. Similarly, this dedication to the job at hand dictates, or should dictate, the actions of us with whom you have entrusted the Union.

With our short-staffed Executive Committee, NAAE has been forced to put out the fires Management creates with



proposal after  
proposal to  
alter the  
working  
conditions of  
PPQ Officers  
and

Technicians plus deal with the intentional efforts of Dr. Dunkle's designee for Labor Relations to disrupt the ability of NAAE to address these changes as we have in the past.

Here is an abbreviated description of some of the new and continuing issues we have been working on:

### *Downgrade*

Two weeks into our term, April 28, 2000, the Agency proposed to downgrade 477 GS-11 journeyman PPQ officers to the GS-9 level. Though many of us will be eventually downgraded, we have continued the struggle to obtain the best terms possible and we believe we have done that. This issue is so important that it merits its own article below.

### *Antilles Consolidated School*

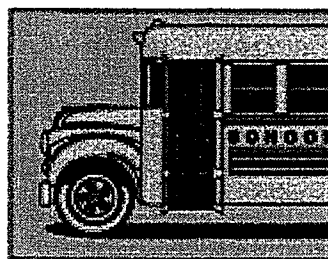
Management proposed in June 2000 that it would no longer certify bargaining unit employees' children in Puerto Rico for attendance at the local Department of Defense schools beginning with the 2001-2002 school year. The primary benefit of these schools is that the language of instruction is English. [Public schools in Puerto Rico are taught in Spanish language.] We negotiated to impasse and took our case to the Federal Service Impasses Panel to resolve the disputed proposals and to prove our point: Management has no concern for the welfare of employees' children and just want to save a few thousand dollars on the

tuition for these DOD schools. After going through 99% of the FSIP process, the Agency "chickened out" just before FSIP was going to impose solution the Agency would not like. It withdrew its proposal and instead implemented a new proposal having the same effect--immediately excluding most of the students from the school. Much of the semantics about certification for attendance involves the issue of employee transferability to other U.S. locations where English is the primary language of education instruction. This is a condition of certification. The last time I checked, we have a National Collective Bargaining Agreement that permits merit lateral transfers for all bargaining unit employees. We filed a ULP for implementing without negotiating.

Most recently the local employees in Puerto Rico have filed a lawsuit in U.S. District Court seeking to compel the Agency to continue to certify the children and pay any tuition. NAAE will be closely monitoring the progress of this suit and will be proceeding with its own action to protect our rights and yours through ULP charges.

At the beginning of July, we reached a ULP settlement with management on the Antilles School issue.

Management is now compelled to certify (and pay the tuition of) all the children for attendance at



the school in the 2001-2002 school year. Management must also re-negotiate with the Union over this issue in New Orleans in September 2001.

### *Cruise Ship Policy*

NAAE negotiated an agreement to mitigate the effects of imposition of a new Management policy to waive boarding of many Mexico and Caribbean arriving cruise ships. The agreement will give an additional year to study the data and determine if the action is warranted and what the appropriate blitz rate should be to maintain quarantine control.

### *Reduction in Force Policy*

The Agency imposed a new RIF policy even though we remain in negotiations over the same policy at the National Contract in Seattle. The imposition occurred because a timeliness issue, created when Management refused to accept hand delivery of the Union proposals in its offices in Riverdale (It's ok to send stuff to me via Fed-Ex, but it's not ok for me to send stuff to the Agency by messenger, YEAH, RIGHT.) NAAE will continue to pursue its rights through the grievance process.

### *Performance Evaluation Policy*

The Agency imposed this policy in the same manner as the RIF policy. Our rights are pursued in the same grievance.

### *Document Tolling*

The Agency imposed its own one-sided policy on tolling of document for timeliness. NAAE has challenged this policy imposition under the same grievance as the two issues discussed above. Incredibly, the Agency used the policy at issue to declare the timely-served documents as untimely. Even the U.S. Constitution forbids ex-post facto laws.

[Document tolling is the often arcane procedures for legally determining if

required notices and responses between the Agency and the Union or employees (such as grievance answers or requests to bargain) have been sent or received on time-untimely process can, for our side, result in loss of the rights to proceed with a grievance or loss of the right to bargain over an issue.]

### *Los Angeles Lawsuit*

The suit against NAAE stemming from the tragic deaths of Officers Iijima, Suzuki, and Rothman has been **dismissed** at the trial court level. The decision of the judge to dismiss is under appeal. Any Plaintiff's chance of success in reversing the dismissal on appeal is very slim.

### *K-9 Policy*

Mitigation of some of the adverse effects of this policy was negotiated with the Agency. The policy provides for minimum time-with-dog and time-in-port restrictions for individuals hired and trained as canine handlers. Remember, this agreement does **not** cancel any hardship transfer agreements we already have with Management.

### *Credit Card*

This policy for officer processing and acceptance of credit cards for performance of reimbursable services is still under negotiation with the Agency.

### *Drug Policy*

These negotiations are on hold pending creation of National Generic Groundrules, still in negotiation. The Agency has decided to update its Drug-Free Workplace Policy. GS-436 officers are only subject to post-accident and reasonable suspicion testing. A 1990 permanent injunction won by NAAE from the U.S. District Court is still in force.

It forbids random drug testing of all PPQ Officers, unless they possess Top-Secret security clearances.

### *National Groundrules*

NAAE attempted to follow the FSIP-approved template of Interim Generic Groundrules for Local Negotiations when we submitted our proposal for similar Groundrules for National Negotiations. The Agency decided, however, to re-write the book on groundrules. Seven months later, we are still negotiating. Currently we are awaiting Impasses Panel disposition of our case and anticipate having a full set of groundrules soon.

### *Lateral Transfer*

This policy was implemented. It parallels much of what both sides previously agreed to at the Seattle National Contract negotiation table.

### *Uniforms at NOT*

The Agency unilaterally implemented the policy of forcing uniform wear at NOT stating there was "nothing to negotiate". A ULP was filed and reversed the policy. The Agency was forced to pull it back. Negotiations on this issue await resolution of the National Generic Groundrules. Remember, NAAE must stand firm on issues whenever the Agency falsely asserts there is "nothing to negotiate". If this "nothing to negotiate" notion held true for this issue, the Agency would not hesitate to utilize the tactic at every instance.

### *Mass Transit*

The Agency has recently issued its policy on commuting subsidies. NAAE has already completed negotiations on this issue at the

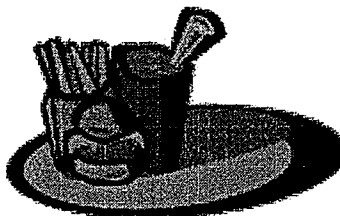
National Contract negotiations in Seattle, but we will have to wait for the contract for those rules to go into effect. In the mean time, it would be good to examine the new rules in effect now to see if you may qualify for a mass transit subsidy.

### *SITC Position Bargaining Unit Status*

NAAE continues to pursue bargaining unit status for the newly created Smuggling Interdiction positions. It is difficult for the Agency to argue that these jobs are not just a re-hash of the GS-11-436 trade compliance specialty bundled and repackaged as a different job. We must seek NAAE representation for these 14011 positions in anticipation of other possible reclassification actions.

### *Forced Unpaid Meal Break*

Negotiations slowly progress over the local impact of adding an unpaid meal break. The substance of the issue of whether the meal break is negotiable is still at FLRA; however, Management has insisted upon implementing meal breaks in the meantime



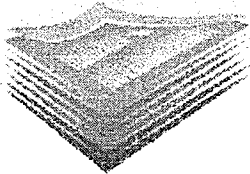
in a few locations such as Miami. This remains another example of Management's

insistence on imposing an archaic command and control structure that spits on employee dignity and self-determination. "Let's treat people like children" must be the Agency's latest demeaning slogan. Some of those people running this Agency should return to their sterile labs to check their petri dishes to see the mold that grows. Unpaid meal breaks in this Agency went away for a reason. Management couldn't give the breaks, and if they gave them, they couldn't give them

with out interruptions. Make sure to make it a personal issue if you are wronged by elements of this implementation.

### *Three Unfair Labor Practice Charges*

Up to this time, I do not believe that I have had to request the FLRA to file unfair labor



practice charges against the Agency more than three times in my 15-year Union career. I found myself filing three

ULPs against the labor relations staff within a week. We at NAAE do not wear ULP filings as a badge of courage. We find them a difficult endeavor, but a necessary evil when we believe the Agency has violated the Labor Statute in connection with a serious matter.

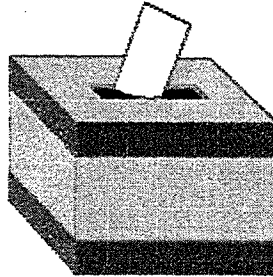
The **first** ULP was for refusing to provide NAAE with the critical information we had lawfully requested under the Statute and needed to negotiate the downgrade. The Agency settled this ULP at the 11<sup>th</sup> hour, moments before negotiations were to begin.

The **second** ULP was for unilaterally implementing the Uniforms-at-NOT policy. The Agency settled this ULP by rescinding the policy and agreeing to negotiate and withholding any further implementation until negotiations have been concluded.

The **third** ULP was for unilaterally cutting off the NAAE chief negotiator's official time and forbidding her to use any official time to work on the National Contract. This was the most serious of the charges. On one hand, the Agency was complaining about the apparent lack of progress on the contract, and, on the other, it was the Agency itself that prevented the work from moving forward. More than 6 weeks of effort was

expended getting the time back, time that could have been spent on the contract.

**FOURTH ULP**-At press time NAAE has filed a ULP against the Agency for refusing to negotiate in good faith in the Antilles School issue.



### *Election Committee*

Time is a wasting. NAAE needs an Election Committee of a few worthy individuals ideally situated to provide services (not off the

pony express route) to take charge of the 2002 elections. The Committee Chairman will receive a paid trip to the 2002 NAAE Convention to report on the election results. Show your Union interest.

Volunteer by contacting Mike Randall, President, at the numbers and addresses indicated on this newsletter.





## CTT and Premium Pay Under Threat

### Membership and Our Ability To Fight for YOU

At press time NAAE received two notices regarding CTT, one proposing to fix "all CTT at two hours flat" and another declaring payment of CTT on weekend tours of duty "illegal" (a practice with well over 35 years of history.) While we at NAAE await an explanation of these vague memoranda, we do plan a vigorous response.

This move against premium pay, as well as most of the other issues about which we have criticized Management actions as you have seen in recent newsletters, is just another in a long line of changes Management has planned to hurt, demoralize and retaliate against front line employees for exercising their basic rights (i.e. grieving, aspiring to meet financial obligations—like putting food on the table or paying their mortgages—, "visiting" their families during normal hours, possibly even breathing), to siphon PPQ User Fee monies to run APHIS operations, and to attack our employee Union. Our Agency is at war against you and us. Call a National Officer of NAAE and ask him or her for the latest report on what is happening. It changes daily.

### THIS IS THE TIME TO RISE TO THE CALL

There is a direct correlation between our financial resources and our ability to fight issues that affect us all. Between all of the issues on the burner and the expensive wrongful death lawsuit we have successfully defended, things financial have become very strained. We at NAAE would rather think less about our financial strength and more about our people strength. Increased membership automatically means healthier finances. We'd prefer to give increased membership a try before considering a dues increase. In this issue we have provided a membership form. Cut this form out of the newsletter, duplicate it, pass it on, hang it on the Union bulletin board, USE IT! Convince your non-member co-workers that we are all in this together—that fairness is worth fighting for.

Mike Randall  
President

Completed original forms should be mailed to: NAAE c/o Mike Randall P.O. 31143  
Honolulu, Hawaii 96820-1143



United States  
Department of  
Agriculture  
Marketing and  
Regulatory  
Programs  
Animal and  
Plant Health  
Inspection  
Service

July 16, 2001

Mr. Michael Randall  
President, NAAE  
P.O. Box 31143  
Honolulu, Hawaii 96820

Dear Mr. Randall:

Pursuant to the collective bargaining agreement between the parties, please be advised that effective August 15, 2001, CTT will now be a flat 2 hour in all locations.

If you need any further information, please contact Mr. Christine Bern, Chief Negotiator, at 202-720-4195.

Joseph F. Grimes  
Joseph F. Grimes  
Chief, Labor Relations Officer  
Animal and Plant Health Inspection Service

cc:  
Dr. Richard Dumble



United States  
Department of  
Agriculture  
Marketing and  
Regulatory  
Programs  
Animal and  
Plant Health  
Inspection  
Service

July 16, 2001

Mr. Michael Randall  
President, NAAE  
P.O. Box 31143  
Honolulu, Hawaii 96820

Dear Mr. Randall:

We have been advised that some members of your bargaining unit have been involving payment for CTT on weekend shifts and, as you are aware that, payment of CTT for weekend overtime hours is illegal under the statute. So, in that regard, pursuant to the collective bargaining agreement between the parties, please be advised that CTT will be eliminated entirely on weekend tours of duty.

If you need any further information, please contact Mr. Christine Bern, Chief Negotiator, at 202-720-4195.

Joseph F. Grimes  
Joseph F. Grimes  
Chief, Labor Relations Officer  
Animal and Plant Health Inspection Service

cc:



# 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	

## 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 \$ \$7.50 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

NAAE National President

Date (Month, Day, Year)

## 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

1-Agency Copy

2-Labor Organization Copy

3-Employee Copy

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## **Downgrades HAPPEN!**

*Reprinted from NAAE Special Bulletins – [www.Infested.net](http://www.Infested.net)*

**A**fter delayed and protracted negotiations, Management and the Union have concluded collective bargaining over the impact and implementation of the downgrade of some 420 GS-11-436 SJ 8227 positions. The effective date of the downgrade action, and thus the beginning of the two-year saved-grade period, begins November 1, 2001. Saved-pay is indefinite and you will not make any less money than you will be making at the end of the two years (i.e. GS-11 pay, plus any of the full yearly increases and step increases you accrue over the next two years.), as long as you play by the rules. The negotiations were concluded March 29, 2001 in Washington, D.C. at a mediation-arbitration session ordered by the Federal Service Impasses Panel. Had Management and the Union been unable to agree on terms of an agreement, the FSIP would have been empowered to impose a solution, possibly not to the liking of NAAE and its members.

### **Q and As**

#### **The Legal Why**

A discussion of the downgrade issue must begin with the first "truth": Management has an **ABSOLUTE RIGHT** under the law to downgrade us. This right is not a matter that we as a union could negotiate. We could not prevent the downgrade's occurrence; this is a Management imperative. NAAE was limited by law to negotiate only the impact and implementation of Management's actions. NAAE has been engaged in negotiating the best possible terms for our members since the downgrade was first proposed one year ago. [NAAE was involved in corrective and ameliorative action since January 1999 when the Office of Personnel Management issued, at the request of APHIS/PPQ Management, an advisory opinion asserting that the APHIS-written GS-11-436 position description was "misclassified" as GS-11 work and should be classified as GS-9. NAAE participated in a committee to re-write and re-think many of the 436 specialty positions, but Management gave this committee the silent death after a year of work, despite some very productive meetings.] The core of OPM's advisory, non-binding opinion remains as the Agency's publicly stated rationale for mandating the downgrades.

#### **The Real Why**

In the late 1980s, NAAE was persuasive in getting the Agency to recognize that PPQ Officers were entitled to a more professional workplace and GS pay equity with our sister agencies, of U.S. Customs and INS. The Employee Utilization Study of 1988 attempted to find a path toward upgrading the GS-436 journeyman to a GS-11 rating. Merit promotions began in April 1993 when about 300 GS-11 positions were created and filled. Unfortunately, these promotions were only a partial fulfillment of the Agency's promise to make the career ladder reach GS-11 for all GS-436 PPQ Officers. About 200 more GS-11 positions were created and filled by 1997 before our view and Management's view of history diverges.

Vacancies in the GS-11 positions occurred and for other reasons GS-9 Officers found themselves working side-by-side GS-11s performing duties identical to the GS-11s. Our contract requires the Agency to temporarily promote individuals when they perform duties of a higher graded position for longer than 60 days. Approximately 125 bargaining unit members grieved and have had initial success in these grievances as determined in arbitration proceedings, recently affirmed by the Federal Labor Relations Authority. The Agency mass downgrade is simply retaliation for these grievances. The Agency, in its own mistaken belief, thinks abolishment of our SJ 8227 GS-11 position will be the end of its liability on the temporary promotion issue. The Agency is **WRONG**, legally and as a practical matter. Instead, the Agency will succeed in demoralizing and alienating the people who it decided were best and most deserving of achieving journeymen status at the GS-11 level starting in 1993.

In my opinion, the Agency deserves a certain minimum degree of respect for their viewpoint, and they shall most certainly receive it from me.

### **Not Out of the Woods Yet**

Below is a summary of the text of the signed agreement hammered out between the Agency and the Union after many weeks of negotiations and finally with the aid of FSIP. (The Department still has an opportunity to review this agreement for legal consistency.) My explanation of each provision appears in italics.

### **Downgrade Agreement**

1. The downgrade notice letters going to all GS-11 436 PPQ Officers shall be dated no earlier than October 1, 2001. The downgrade of the GS-436-11 SJ 8227 shall be effective no earlier than November 1, 2001.

*Normal grade, step, and yearly increases will continue until November 1, 2003. Thereafter, your pay is calculated at your final rate of GS-11 pay plus one-half of the yearly increase for a GS-9 step 10.*

2. Every employee affected by the downgrade shall receive automatic consideration for GS-436 positions in his or her Local Commuting Areas for the balance of the 2-year saved-grade period. An affected employee may indicate his/her interest in other series for which he/ she qualifies by filing the proper declaration of interest with the appropriate personnel office at any time during the remainder of his/her 2-year saved grade period.

*For the entire 2- year saved-grade period, you are entitled to automatic consideration for all non-supervisory GS-11-436 positions for which you qualify plus non-competitive consideration for other series after an indication of interest. You may be considered for these positions.*

3. For the purposes of determining a "reasonable offer," an offer of a position in the GS-436 series, or any series in which the employee has indicated a current interest, shall be considered reasonable. No other type of offer shall be construed as a reasonable offer.

*By law, you must accept a reasonable offer of a position in order to maintain your save-grade and save-pay status. If offered a GS-436-11 position for which you qualify, you must take the position to maintain grade and pay. The non-acceptance penalty also applies for all other non-436 positions you have indicated a written interest.*

4. Refusal of an offer of a position at a duty location that is outside a 25-mile driving distance, door-to-door, from the employee's current duty location will not be considered as a "reasonable offer" for the purposes of enforcement of loss of saved grade and pay provisions.

*You incur no penalty for refusing positions outside the Local Commuting Area.*

5. Within 30 days of the effective date of this agreement, the Agency shall:

- a. conduct another EEO Impact Study, including conducting an affected employee self-identification survey, to determine whether the downgrade action will have an adverse or disparate effect or impact upon any protected group, including Hispanics, African-Americans, Asians or Women;
- b. Share the collected data and other results of that EEO Impact Study with the Union; and
- c. Send out the employee self-identification survey under a joint Agency-Union cover letter explaining the necessity for the survey and explaining the importance of corrected data.

*The Agency has committed to doing a better job in conducting an EEO impact study in an effort to determine more accurately if the downgrade action will create new adverse or disparate impacts.*

6. The Agency shall, by December 31, 2001, complete its current work (on those draft position descriptions started on or before March 28, 2001), through the classification step, on developing new GS-11 position descriptions for which current GS-11s, when downgraded, would be eligible to fill through merit promotion or otherwise.

*A number of potential GS-11 position descriptions to augment/supplement/replace some of our GS-436-11 specialty positions are in the mill, or have been lost in Management's black hole. The Agency has committed to continue these efforts and complete the work by the end of the year.*

7. A workgroup of NAAE and Employer representatives, including one classifier, shall be formed to conclude work on position description drafts that are in various stages of completion. Its mission is to develop complete packages of new position descriptions into which the employees who have been downgraded from GS-436-11 may be re-promoted. Once the workgroup's package is received, the Agency classifier will make a "classification" determination within 30 to 60 days. The workgroup shall begin working June 1, 2001. The committee shall function through the duration of the two-year saved grade period. This period may be shortened or extended by mutual agreement.

*This is one of our more important provisions. Management has agreed to restart the committee to re-work the journeyman job. This committee will have a charter, objective and an expected final product. This committee will be of a more manageable size (3 per side) to eliminate any hindrances.*

8. The Agency shall actively pursue development and classification approval of position descriptions in the GS-11-436 series based upon the duties of remote site positions (e.g., the SJ 8230 small port, SJ 8227 domestic site) in each appropriate domestic/interior location.

*Management has committed to finding a way to preserve or resurrect the SJ 8230 positions. These positions were the one-person officer-in-charge and small-port journeyman positions lacking direct supervision made famous by the "Chicago Seven" cases.*

9. Consistent with government-wide regulations, grade and pay retention rights shall not terminate with an employee's lateral move within APHIS.

*Prior to the downgrade, any GS-11 who wanted to transfer had to accept a voluntary GS-9 downgrade because the GS-11 position resided with the duty station and not with the person. After the downgrade, the downgraded employee is free to transfer and will not lose saved-grade and saved-pay benefits. This provision makes provision #10 obvious in purpose, and possible.*

10. Employees downgraded from an SJ 8227 position shall have a special one time, five-month open season to apply for lateral transfers on the GS-9 lateral list. This open season commences the day following the effective date of the downgrade.

*As a special benefit to the downgraded employees, a special open season for applying to the lateral transfer list will occur, allowing downgraded employees to move without loss of benefits.*

11. All PPQ vacancy announcements (e.g., GS-11, GS-12, career ladder including GS-12) to which downgraded bargaining unit members may respond shall have a statement indicating whether the announced Position Description has been approved by U.S. Office of Personnel Management and, if not approved by OPM, an indication of the name of the Office and Division in the Agency or Department that approved that position description. This requirement shall apply for the entire 2-year saved grade period.

*The Agency originally classified the GS-11-436 journeyman position ITSELF. The Agency invited OPM to provide the Agency a way out of its asserted "misclassification." NAAE knows this whole downgrade scenario is a vendetta, a convenient excuse which finally plays out as the Agency's mistaken belief that the downgrade will get the Agency out of its contractual responsibilities to the Chicago 125 grievants and the next story to be told. This provision is to alert the bargaining unit employee to any more position descriptions for which the Agency might yet turn itself in to the "OPM Police" at some later date.*

12. All negotiations on procedural and impact issues arising from re-integration of the former GS-11 workforce back into any workplan or rotation scheme with GS-9 personnel shall be conducted at the local level in accordance with the nationally negotiated local groundrules after

conclusion of negotiations through impasse of this national agreement. The target date for beginning local negotiations shall be within two months from the commencement of the downgrade. The parties agree to make every effort to conclude negotiations expeditiously.

Management couldn't figure out the purpose of this provision. We knew that there would be all kinds of problems trying to work out shifts, schedules, rotations, long-terms, etc., at any place you have GS-5-7-9s, technicians, L/As (i.e. otherwise known as us) after telling the GS-11s they are really GS-9s. We thought home rule would be best here, so here it is.

e-mail questions to: [mikera@aloha.net](mailto:mikera@aloha.net) or [Downgrade@Infested.net](mailto:Downgrade@Infested.net)

Answers to your questions will be posted at: [www.aloha.net/~mikera/dngrade](http://www.aloha.net/~mikera/dngrade) and on [www.Infested.net/DownGradeQAs.html](http://www.Infested.net/DownGradeQAs.html).

/s/

**NAAE**

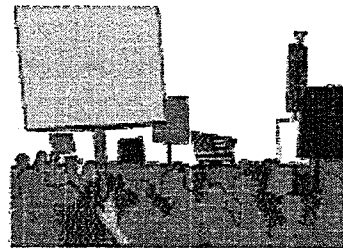
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## **The Convention**

*Spring 2002*

Bill Johnson

**G**reetings, one and all. One of my first duties as your 2nd National V.P. is to investigate sites for the upcoming NAAE Convention in the Spring of 2002. We, on the Executive Committee, started the process by deciding that the Convention should be held in the Western Region this time around. We try to vary the location to provide a chance for everyone to attend. Room availability, airfare rates, and even weather are also contributing factors determining where and when an event like this will be held.



As it stands now, I am investigating all aspects of "conventionality" in the western region (i.e. Las Vegas, San Diego, Salt Lake City). I am also soliciting ideas from members. If you know of special or interesting things to do in these areas, or you have a good connection for hotels, rental cars, or restaurants, please let me know at the address on the back of the Newsletter.

For those of you who have never been to a NAAE Convention, I urge you to consider coming to this next one. I remember what a huge awakening I had as to the workings of both the Union and PPQ in general. One tends to develop tunnel vision working long and odd hours continuously. It is easy to forget that there are many people involved with PPQ, at many levels, all over the world. It is exciting to realize all the opportunities that abound at the Convention. It is a great place to exchange ideas with peers, hear Management's views, toss tough questions at

Management representatives, and receive Labor-Management training. For instance, when I attended my first Convention, I expected a lot of fluff. What I found was a group of devoted Union people struggling to learn procedures, case law, and strategies to help themselves rise above outdated policies and inept managers. I also saw strong bonds of friendship and camaraderie being formed. (I am still in contact with people I met six years ago.) The real hook for me was realizing that a small group of people were giving their own blood, sweat, and tears, on a daily basis, to help make a difference for everyone, often without recognition.

I don't expect everyone will have such an epiphany upon going to a NAAE Convention. I do promise you that if you come, you will learn there truly is a way to make your PPQ life a little better. There is also the part about just plain having fun.

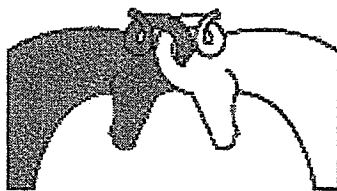
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## At The Table

*Editorial*

Kate Richardson

The year 2000 began with great promise that we would finally see the successful conclusion to National Contract Negotiations. The parties (Union and Management) had started, in December of 1995, with proposals that couldn't have looked more different: Management offered a narrow scope abbreviation of the Red Book (our current Contract); the Union was after something that would look a lot more like Customs' contract, addressing a wide range of employee as well as union concerns. After several years backlog of animosity, the parties had finally learned to work together: Twenty five articles had been signed, and we were close on more than one half of the remaining ones. We had agreed on the formatting of each article, that is which proposal would serve as the template for the final article; Management had quit resisting (so hard) the inclusion of helpful procedures and information; in return, the Union had agreed to go along with new ideas Management offered on such topics as Conflict Resolution, Grievance, Domestic TDY, and RIF. In early 2000, we heard some ominous rumblings in the background; Management was unwilling to schedule sessions for the duration of 2000, but I felt that in light of the effort invested and our accelerating progress, Management would ultimately not want to scuttle our working relationship and risk stalling the process.



In January 2000, the two sides' negotiating chiefs, Mike Wafer and myself, met for two days to work on advancing five more articles or topics toward completion, signing one. Our next full session, in February, resulted in the completion of 11 more articles, a number equal to the total signed during the previous year. I thought such progress would be something to celebrate, but, instead, half way through the two-week session, Management announced that, because progress was so slow, it would not be coming back to the bargaining table. This would be the end of negotiations.



Well, I was confronted with a dilemma and, perhaps in error, opted for the kinder, gentler and much quicker route by viewing this stalemate as only a "scheduling impasse" and called in the mediator, as opposed to treating this as bad faith bargaining and entering into the lengthy, though possibly more satisfactory, ULP process to compel the resumption of negotiations. To get Management back to the table quickly, the Union had to agree to the exchange of final offers at the end of a proposed three-week session in May, not knowing what would happen in May if there was more progress to be made before the parties were ready for impasse.

Management had also used the February session to introduce a brand new Overtime proposal designed to eliminate all locally negotiated procedures. Under a barrage of criticism from the Union, I think Management felt its Overtime proposal needed more work, and so agreed to two more sessions after May.

What we experienced was, I believe, the result of changing of the guard in APHIS. A new tone and approach toward labor relations was beginning to unfold, and we were about to undergo the most precipitous decline in relations with Management I have ever seen, one that would directly affect our negotiation process. In the intervening time, before the new APHIS management negotiation team took over completely, we and the PPQ team were able to sign another five articles, but time and opportunity for agreement began to slip away and were soon lost as Management sorted out its transition. (As a backdrop, Management announced the GS-11 downgrade on April 28, a portion of the May session was given over to a question-and-answer session on it, and the Union became intensely involved in seeking ways to counter it. More elsewhere.)

The new APHIS management team, especially its "Chief Spokesperson" and team members' supervisor, Joseph Grimes, demonstrated repeatedly its and his lack of familiarity with all that had transpired before their arrival. The new team tried to reinterpret our negotiated ground rules, ignored agreed-to formatting changes, ignored input from its token PPQ representatives by discarding work we had already accomplished on the Domestic TDY article, and sought to reinterpret the very agreement we have had with PPQ since 1995 concerning official time for the Union to conduct its representational business. The two-week September 2000 session, styled by Management as a "mediation" -- although there was no indication that we were at impasse or could no longer make progress -- was tumultuous. Even though the various Management team members demonstrated basic unfamiliarity with the proposals they were assigned to negotiate, their supervisor continually attempted to hurry up the discussions to reach impasse within the first week.

As it became clear the Union negotiators wouldn't be forced to mediate prematurely, and Management's team couldn't be forced to work with us at the table, Mr. Grimes finally agreed to allow his team to continue working with us, after the session concluded, away from the table through electronic (telephone/email) exchange of ideas and proposals. During the second week of the September session, Management stated it wouldn't continue at the table unless the Union presented its latest Overtime proposal. Because we did not have that proposal in final form to give them, Management left a day early, but agreeing to a subsequent special mini-session on Overtime (which occurred in October). In spite of problems too numerous to mention, some

progress was made during the September session including an agreement to withdraw two articles from the negotiating process. Nothing of significance, however, was ever heard from the Management team concerning our agreement to continue working together by electronic means.

On October 31, I received a binder containing Management's "best and final offers" for 14 of the remaining 15 articles (the Overtime article to be submitted later), and a letter from Mr. Grimes demanding the Union provide its final best offers to Management by November 10 after which I was to report to my "previous position". Appeals to PPQ managers for assistance in communicating with APHIS labor relations personnel initially sounded positive; they would help straighten out the interpretation of our official time agreement. But that faint offer soon faded to stoney silence, and on November 27, I was ordered off official time and was effectively barred from the Union office and from access to my contract negotiations files.

*To be continued...*

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## **GENERAL COUNSEL'S CORNER – By Kim Mann**

### **I. Court Lets NAAE Out of Wrongful-death Lawsuit.**

As reported in prior editions of the *Newsletter*, the estates of Morley Suzuki and Clayton Iijima, two first-line PPQ Supervisors at LAX, filed a lawsuit in Los Angeles seeking to hold NAAE, both the National and Local, partially legally responsible for the deaths of the two PPQ Supervisors. They were shot to death three years ago allegedly by a PPQ Officer, David Rothman, who then took his own life. The principal defendants in the lawsuit are Eli Lilly, the manufacturer of Prozac, the drug Mr. Rothman allegedly was taking at the time of the shooting, the pharmacist who prescribed Prozac for Mr. Rothman, and Mr. Rothman's treating physicians. The plaintiffs' complaint alleged that the Union knew Mr. Rothman was on Prozac and was prone to violence and failed to warn Management about his condition and that it knew of the planned meeting between Mr. Rothman and the two deceased PPQ Supervisors but failed to stop it. The National elected to fight the lawsuit vigorously, but the LAX Local had no assets and simply allowed the plaintiffs to obtain a default judgment against it. James Attridge of the San Francisco office of ShawnCoulson, the Washington, DC law firm that serves as NAAE General Counsel, represented NAAE throughout these proceedings. James convinced the California trial court to dismiss the National and the Local from the lawsuit – even though the Local had a default judgment entered against it – because the Union could not be held responsible pursuant to any recognized legal theory of liability.

While the result is a major triumph for NAAE – it could not have been better – it was not without substantial cost. NAAE incurred substantial legal fees for the representation of its interests during the long, drawn-out discovery stage of the lawsuit, preparation of NAAE's motion for summary judgment, eventually granted by the Court, and attendance at numerous court hearings. The estate of David Rothman, also named as a defendant in the lawsuit, permitted a default judgment to be entered against it. The Court awarded damages against the Rothman estate in favor of the two plaintiff estates in the amount of \$4.5 million each. As a

practical matter, those two default judgments are probably uncollectible. All remaining defendants in the suit either settled with the plaintiffs or were dropped from the suit. The principal defendant, Eli Lilly, agreed to an out-of-court settlement, reportedly in the \$500,000 to \$600,000 range.

Even though the California trial court has let NAAE off the hook, plaintiffs can appeal its ruling to a higher court in California. Mr. Attridge reports that such an appeal is likely, but he is optimistic the California appellate court will uphold the decision of the trial court in favor of NAAE.

## **II. Chicago 125+ Temporary Promotion/Backpay Grievances Remain Mired In Litigation.**

Arbitrator Professor Bernhardt has now heard the testimony of all 28 Miami-based PPQ Officer grievants seeking retroactive temporary promotions and backpay for performing GS-11 work while serving as GS-9 PPQOs. (As previously reported, the Agency vigorously disputes the Miami grievants performed GS-11 work even though working side-by-side with other GS-11s doing the same work.) The Union and the Agency have submitted their respective post-hearing written briefs -- summaries of the facts and legal arguments -- in support of their respective positions to the Arbitrator. The Arbitrator is expected to issue his decision on the Miami grievances in March or April 2001.

In October 1999, the same Arbitrator, Professor Bernhardt, found in favor of the four small-port grievants whose testimony he heard in Cleveland, OH in the summer of 1999. He awarded them the full retroactive temporary promotions and backpay they had requested. The Agency attacked his decision, filing exception to his award with the Federal Labor Relations Authority ("FLRA") in April 2000. The Agency's exceptions, to which NAAE replied, remain pending before FLRA, but a ruling from FLRA is expected within the next several months. NAAE is optimistic the FLRA will sustain the Arbitrator's awards.

The next group of temporary promotion/backpay grievances that Arbitrator Professor Bernhardt has been assigned to hear are those of the 22 grievants whose grievances the Agency originally agreed to settle two years ago on the same basis as the "Chicago Seven." The Agency subsequently reneged on its settlement commitment as reported in the last issue of the *Newsletter*. These 22 are small-port grievants whom the Agency has admitted performed the duties of GS-11 PPQ Officers under the GS-11 position description SJ 8230. Despite this admission and the Agency's prior promise to settle, the Agency has forced the Union to submit all 22 grievances to arbitration before Professor Bernhardt.

During January 2001, Arbitrator Professor Bernhardt heard the Union's testimony in support of nine of the 22 small-port grievances in Baltimore, MD and directed the Agency to put on its case in opposition in April 2001. The parties will then submit written briefs, summarizing the facts and argument, to assist the Arbitrator in reaching his decision. Thereafter, probably in the late summer of 2001, the Arbitrator will hear the remaining 13 grievances making up the original 22. Collectively, the 22 grievance cases are very strong and should produce a result no less favorable than the Chicago Seven if the Arbitrator and FLRA follow that precedent.

It is clear from the above history that arbitration of these cases, involving now a total of 125 grievances, could go on for several years unless the parties agree to settle them. Extensive settlement discussions have taken place periodically over the last four or five years, including most recently within the past few months. Despite these efforts, the Union and the Agency have not been able to reach agreement on fair, reasonable terms and conditions of settlement. The Union remains open to renewing settlement talks at any time and has communicated this desire to appropriate PPQ officials.

### **III. Agency's Downgrade Proposals are Now at Impasse.**

Approximately a year ago, the Agency proposed to downgrade all GS-11 PPQ Officers serving as GS-11s under the position description SJ 8227. The sweeping downgrade would encompass approximately 400 bargaining unit employees. The Agency publicly asserted only one reason for downgrading – an advisory opinion the Agency requested and received from OPM in 1999 contending that SJ 8227 duties of PPQOs do not constitute GS-11 work under OPM classification standards. In other words, the Agency takes the position that, in its view and based upon this OPM advisory, the SJ 8227 position is improperly classified at the GS-11 level.

For the past 12 months, NAAE has been engaging the Agency in a series of actions designed to lessen the adverse impact of the proposed downgrades and to protect the rights of all downgraded GS-11s. The Union's hands are somewhat tied because classification issues such as those involved in downgrades are normally considered outside the scope of the collective bargaining agreement. Because these downgrades deal with classification matters, they are deemed not negotiable as to their substance under FLRA law as well as in NAAE's contract. Despite the handicap, NAAE submitted 15 strong impact-and-implementation (I&I) proposals to the Agency to protect the downgraded GS-11s, to the full extent permitted by law, when the day finally comes for the Agency to put the downgrades into effect. The regulations of OPM already provide save-grade and save-pay provisions for all downgraded employees, protecting them against any loss of salary and lower grades for a period of two or more years following the effective date. The I&I proposals of NAAE include setting an effective date for the downgrades to coincide with either October 1, 2001, or three months from publication of the so-called Ruby Washington report (the long-overdue OPM report rewriting the Life Biological GS-400 occupation series), or nine months from the conclusion of negotiation, whichever date comes last. Other NAAE proposals include compelling the Agency to complete its on-going development of new GS-11 positions, such as the GS-401-11 SITT position, before downgrading the SJ 8227 GS-11s.

The Agency and the Union concluded extensive bargaining in November 2000, attempting to negotiate the Union's 15 proposals. The Agency refused to accept any of them or to offer any form of compromise. At the end of the day, the Agency declared the parties at impasse, deadlocked, and took the unresolved issues to the Federal Services Impasse Panel ("FSIP") for resolution. In its opening filing with FSIP, the Agency took an unprecedented tact. It declared all 15 Union proposals "nonnegotiable." Under the rules of FSIP, the FSIP may not exercise jurisdiction over any union proposal an agency asserts in good faith is not negotiable as contrary to rule, law, or regulation. Instead, FSIP will leave the parties to take their "negotiability" dispute to the FLRA. NAAE submitted its own statement to FSIP in response to the Agency's.

NAAE argued that all 15 proposals are negotiable and that the Agency was not acting in good faith when declaring the Union's proposals nonnegotiable, labeling it a ploy to avoid FSIP jurisdiction.

FSIP informally determined that the Union's proposals were indeed negotiable and, therefore, falling under the jurisdiction of FSIP to resolve the dispute. FSIP assigned the Union's entire downgrade dispute (over the 15 I&I proposals) to its top staff person to act first as a mediator in an effort to bring the parties together voluntarily to achieve agreement on the proposals and, if that fails, then as an arbitrator empowered to reach a final, binding decision on whether NAAE's proposals should control and apply to the downgrade.

Because FSIP elected to exercise jurisdiction over the Union proposals at impasse, APHIS/PPQ is, as a matter of law, prohibited from implementing the downgrades until FSIP completes its process for resolving the dispute. The FSIP procedures have been concluded. See the related article entitled "Downgrade Happens" in this issue as to the results of that FSIP intervention. In a word (or two), the downgrades have been delayed to November 4, 2001, and a joint Union-Management committee has been appointed to develop new GS-11 positions for which the bargaining unit members will be eligible.

## **I. Meal Periods**

**Management seeks to alter the *status quo*.** The Union and Management have negotiated the impact and implementation of mandatory meal periods in Chicago as an alternative to maintaining the *status quo* and have come down to one remaining I&I issue -- when the lunch will be taken. In all of the negotiations, Management has failed to demonstrate that the current system is not working, a system that includes unpaid lunch breaks on shifts in the Port of Chicago that do not qualify for the exemption. No one has ever suggested the current system is not working or has not worked. Chicago has at least a 35-year history where passenger clearance tours have had no unpaid meal break. Brief (less than 15 minutes) rest periods have occurred (or not occurred) on those tours when a sufficient gap in the work allowed an employee to have a short paid rest -- to have a snack or just to relax. Management's sole mantra for mandating 30-minute unpaid breaks is a memo with a promise of sufficiency of supervision and personnel to afford each employee an uninterrupted meal period even though the work load has increased.

There is another element to the "*status quo*" -- the one that applies to the other tours at O'Hare, specifically the few tours that have had unpaid meal breaks throughout this entire 35-year history. All of these tours, for the cargo personnel and the identifiers, have had their unpaid breaks scheduled in advance, scheduled in the precise middle or, if not the middle, at least in the middle two hours of the shifts. During the recent staffing and foot-and-mouth disease crises, all of these personnel have performed work in the passenger clearance area and have done so without a change in their scheduled mid-shift unpaid lunch tradition.

**Management's "teams" argument is an 11th-hour contrivance.** This argument was not even brought up before the Union in any negotiation session until the very end of the FSIP informal conference session. There are two reopening provisions already incorporated into the newly negotiated lunch I&I agreement that deal directly with this situation. These reopeners are

activated by any agency proposal or plan to increase staffing and institute teams. Provisions in the extant National Collective Bargaining Agreement also would require consultation and afford the Union an opportunity to bargain over the creation of new "team" shifts. The Employer can be sure that institution of a "team" concept would likely result in bargaining on some issue. It is simply not appropriate or expedient to explore the ramifications of a theoretical "team" concept on scheduling lunch in the context of these current, on-going narrow negotiations. There simply is not and was not enough time in the FSIP conference session to explore whether additional staggering of shifts or alternative work schedules would alleviate Management's perceived "need" to require every member of a particular team to take his/her period at one time. Nevertheless, as argued at the session, the Union believes even using the Employer's vague concept of three teams, lunch for the three teams could be accommodated in succession within the two-hour time frame. [As of this writing, Management has yet to provide the Union more details of the "massive" hiring and of its intention to have "teams."]

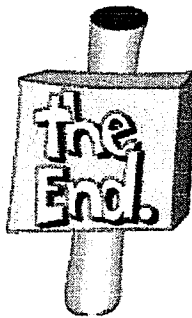
**An arbitration decision for similarly situated PPQ Officers in Philadelphia supports our proposal in Chicago.** A preliminary decision was recently issued by an arbitrator commissioned by FMCS to decide similar issues, ordered by FSIP to interest arbitration in a directly related FSIP case involving unpaid lunch periods at Philadelphia. The tentative arbitrator opinion, subject to subsequent comments from the parties, was issued April 21, 2001 in FMCS Case No. 010125-05227-7. [The Agency has been served a copy of the decision by the arbitrator and was privy to the decision while we negotiated during the recent Chicago session.] The relevant text of this tentative opinion, representing the arbitrator's perception of an agreement reached between the Union and Management during the Philadelphia arbitration session, as it pertains to scheduling is as follows:

"Meals will be scheduled between 5 and 7 pm. Each employee will be assigned the same 30 minute meal period each regular duty day. Employees may swap slots. Management will honor the employee's right to have the same dinner hour each day but if there are unusual circumstances it may, acting in good faith and with the exercise of reasonable business judgment, assign the employee to a different dinner slot for a given day."

The Philadelphia decision contemplates a two-hour window during 10-hour shifts, swapping of meal periods, and procedures for unusual circumstances. All of these factors are embodied in our intent in the Chicago proposal. We did not specify a specific time or hour for the meal times in Chicago in order to provide ample flexibility to address local conditions arising during the two shifts in Chicago, but also to produce a general rule regarding a two-hour window. Swapping was not found to be an unreasonable arrangement, and the language provides for unusual circumstances. The only item not in the Philadelphia agreed-to proposal is the concept of employees being able to request a meal period outside of the two-hour window. This request could be implemented only with the consent of the supervisor and would provide significant benefits to both the Agency and the employee. The Agency would benefit in spreading any strain (NAAE believes there is none) on difficult staffing days more thinly over the entire day and in having employees more satisfied in their work because they are able to exercise more control over their own day. The employees directly benefit in being able to take the meal period in combination with approved leave in order to accomplish appointments off-airport and to

accommodate personal choice in a limited way or health needs without activation of formal medical accommodation procedures.

It is unreasonable to allow the Agency to operate unimpeded with a five-hour window as it requests. The Directive on lunch, 402.1, is intended to limit the lunch periods on their outer edges – no lunch during the first two hours or last hour of any tour. But employees are able to negotiate a narrower window, within those extremes, in order to lend predictability to their eating and to give their body clocks some consistency. Before an employee shows up at work, he or she is entitled to know within a reasonably narrow time frame when he or she will be able to eat next and thus whether and when to eat before arriving at work. Since the Union proposal includes flexibility for Management to deal with unforeseen conditions and thus to alter scheduled lunches in emergencies, the Union's two-hour window is most fair and reasonable to all concerned. Management's "window" is not.



## YOUR NATIONAL NAAE REPRESENTATIVES

### (Your Input & Feedback Is Most Welcome)

**Mike Randall, President**  
P.O. Box 31143  
Honolulu, HI 96820-1143  
3373 Koapaka St. Suite G-330  
Honolulu, HI 96819  
Craig L. Kellogg, 1<sup>st</sup> VP  
7688 E. Summerdale Cir.  
Ypsilanti, MI 48197

**Bill Johnson, 2<sup>nd</sup> VP**  
8431 W. Wilson, 1<sup>st</sup> Floor  
Chicago, IL 60656

**Sarah Clore, Secretary**  
15073 Brookview Dr. Apt #22  
Riverview, MI 48192

**Vacant, Treasurer**

**Work:** (808) 861-8449  
**Fax:** (808) 861-8469 U  
**Home:** (808) 239-4393  
**Email:** [Mikerna@aloha.net](mailto:Mikerna@aloha.net)  
**Pager:** 888-631-3249  
**Work:** (734) 942-7024  
**Fax:** (734) 942-7409 U  
**Home:** (734) 544-3369  
**Email:** [Kellogg@earthlink.net](mailto:Kellogg@earthlink.net)  
**Pager:** 888-631-3245  
**Work:** (773) 894-2920  
**Fax:** (773) 894-2927 U  
**Home:**  
**Email:** [brutis24@hotmail.com](mailto:brutis24@hotmail.com)  
**Pager:** 1-888-631-3246  
**Work:** (734) 942-7024  
**Fax:** (734) 942-7409 U  
**Home:**  
**Email:** [sarahclore@yahoo.com](mailto:sarahclore@yahoo.com)  
**Pager:** 888-631-3247  
**Work:**  
**Fax:**  
**Home:**  
**Email:**  
**Pager:** 888-631-3248

**Vacant, NER V.P.**

**Eileen Thrift, SER VP**  
P.O. Box 158  
Cape Canaveral, FL 32920

**Willis Gentry, CR VP**  
520 Martens Dr.  
Laredo, TX 78041

**John Keck, WR VP**  
P.O. Box 88593  
Los Angeles, CA 90009-8593  
11840 S. La Cienega Blvd.  
Hawthorne, CA 90250  
Kate Richardson, Chief Negot.  
16215 Air Cargo Rd. #112  
Seattle, WA 98158

**Kim Mann, Esq.: Legal Counsel**  
1850 M St. N.W., Suite 280  
Washington, DC 20036

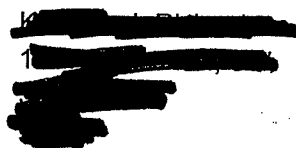
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**Email:**  
**Pager:** 888-631-  
**Work:** (321) 783-3766  
**Fax:** (321) 799 1415 S  
**Home:** (321)  
**Email:** [EileenThrift@yahoo.com](mailto:EileenThrift@yahoo.com)  
**Pager:**  
**Work:** (956) 726-2345  
**Fax:** (956) 727-0273  
**Home:** (956) 727-5521  
**Email:** [gentrywesw@surplus.net](mailto:gentrywesw@surplus.net)  
**Pager:** 888-631-3250  
**Work:** (310) 215-2432  
**Fax:** (310) 215-2528 U  
**Home:**  
**Email:** [johnwkeck10@hotmail.com](mailto:johnwkeck10@hotmail.com)  
**Pager:** 888-631-3244  
**Work:** (206) 246-5870  
**Fax:** (206) 246-6661 U  
**Home:**  
**Email:** [ktichawson97@hotmail.com](mailto:ktichawson97@hotmail.com)  
**Pager:** 888-631-3246

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**Sarah Clore, Secretary**  
15073 Brookview Dr. Apt #22  
Riverview, MI 48192



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