

PPQ and NAAE Green Book Agreement Part I of V

Webinar Recording Transcript

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Hello everyone. This is the PPQ and NAAE Green Book Agreement Part 1 of Part 5 webinar recording. I am going to turn it over now to Pete Brownell and Sarah Rehberg to give you the information on Part 1 of 5, talking about grievances.

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Hi. This is Sarah Rehberg. A little bit of background on the negotiations. NAAE became a Union in 1976 with the entitlement to negotiate agreements. Previous to that we were an association that started in 1954. Several agreements were negotiated prior to the Red Book, which was signed in 1985 and expired in 1988, and has been renewed in yearly increments since then.

The Union started its end of this process in 1992 with the first negotiation starting in 1995. The current session, with the current management and Union negotiator started in 2007. If you would like the full history, read the latest newsletter article that is on our website.

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This is Peter Brownell with APHIS Labor Relations.

This agreement, the new Green Book, applies only to NAAE bargaining unit employees. This is a new agreement. There are many changes from the previous agreement, which is the purpose for conducting these Webinar sessions. This agreement will replace the Red Book which has been in effect since May of 1986.

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The grievance procedure article [Article 16] provides a process for dealing with issues during the term of the Green Book which will be at least 3 years. After 3 years we will have the option of reopening the negotiations or renewing it in yearly increments. Grievances should be addressed promptly. They should be dealt with in good faith. There is no retaliation for an employee filing a grievance. Grievances should be resolved at the lowest administrative level and on an informal basis.

They will be assigned to an Employer representative with the authority to deal with the issue. This is going to be one of the major changes from the Red Book. Under the Red Book, the grievance would initially be sent to a manager and under the Green Book the grievance will be sent to Labor Relations and Labor Relations will send it to a manager.

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The Green Book defines a grievance. A grievance gets defined as any complaint by a bargaining unit employee concerning any matter relating to the employment of that employee. Agreements can also be filed by the Union and it would be any complaint concerning any matter relating to the employment of an employee or employees of the bargaining unit. A grievance can also be filed by management and you can have a complaint by an employee, the Union, or the employer concerning the effect or interpretation or a claim of breach of this agreement. Or you can have a claimed violation, a misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment.

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There are several things that are excluded from being grieved. They include any claimed violation of subchapter 3 of Title 5 of the US code. These are relating to prohibited political activities, retirement, life insurance, or health insurance. These are benefits that the Union does not get to negotiate over. Or a suspension or removal for a national security violation.

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Also excluded from the provisions of this agreement are the classification of any position which does not result in the reduction in grade or pay of an employee. The fifth exemption would be any examination certification or appointment. The sixth exemption would be any termination or benefits payable under Chapter 53 subchapters six of Title 5 of the United States code which relates to grade and pay retention in certain reduction in grade actions. The seventh exclusion would be non-selection to a position filled pursuant to Article 45, voluntary transfers.

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You also cannot grieve the termination of a probationary employee during a probationary period, except as permitted by law. While probationary employees are covered by the contract, during that year management has more rights and probationary employees have few.

You can't grieve non-selection for noncompetitive and competitive promotion from a group of properly ranked and certified candidates, except to the extent the grievance challenges the process or procedures used resulting in the non-selection including but not limited to disparate treatment, pre-selection, prohibited discrimination, or improper panel makeup. You can't grieve the fact that you did not get a promotion, but you can grieve a misapplication of the procedure used in the selection.

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The final two exclusions identified in the Green Book are you cannot grieve notices of proposed actions which if effected would be covered under this procedure. And finally the granting of, failure to grant, or amount of a performance award, quality step increase, or other types of honorary discretionary awards, except to the extent of the grievance challenges the process or the procedures used.

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Also excluded from the grievance procedures are certain statutory processes because you cannot do both. You can't file an EEO complaint or an appeal to MSPB, the Merit Systems Protection Board, under a RIF and also file a grievance. If you are confused on which way you want to go, considering filing an EEO or a grievance, that is a good time to talk to the Union. Again you cannot do both. You can do one of the 3.

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The principle at work is the employee does not get multiple bites of the apple. It is important for the employee to choose the process in which they are going to proceed. Also excluded would be an alleged prohibited personnel practice including but not limited to a prohibited personnel practice under section 2302, B-1 of Title 5 of the United States code. Which relates to EEO opportunity violations. And finally matters covered by sections 4303 and 7512, also of Title 5 of USC, relating to a reduction in grade or removal of an employee for unacceptable performance and adverse actions taken for cause.

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Who can file a grievance? Employees can file grievances on their own as a single individual or several employees can file a grievance. The Union can file a grievance on behalf of the Union or on behalf of an employee or employees and the employer can file grievances against the Union. Employer initiated in grievances are extremely rare.

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Article 16 also provides that management must provide a reasonable amount of official time to work on a grievance. This is one of the more active parts of Labor Relations. It's always difficult to determine what is reasonable and what's reasonable for Sarah may not always be reasonable for Peter. As a supervisor is important to get enough information to make a determination of what is reasonable. I think to do that the supervisor needs to know how much time is needed, when is the time needed, and what is the time going to be used to work on?

Then there should be some dialogue between the Union representative or the employee and that supervisor to come up with the mutual understanding of what is reasonable. It's also not official time on demand and if you get a request for an inordinate or an ordinate amount of hours, there is nothing wrong with saying, I know you need four hours to work on this, but what I'm going to do is I'll give you two hours today, comes see me after that and if you still need time, we can work something out for tomorrow or the next day. That is perfectly acceptable.

As you can see in the bullets here, additional time may be granted upon request provided it is practical and also reasonable. And then we provide a little definition of reasonable; it's what's acceptable and according to common sense or normal practice. If you have questions or concerns about determining what is a reasonable amount of official time you should be reaching out to your manager or to Labor Relations.

Sarah you want to say anything else about official time?

Yes, I completely agree with what you said. It comes down to communication. The employee and/or Union rep need to be in communication with their supervisor to work out what is reasonable for both parties and I would also like to add that this official time, in the case of a grievance, would be for the Union representative and for the employee, they both need time to work together on the grievance. The Union rep will probably need more time after they've talked to the employee.

That's a good point, Sarah. The point to remember is that it works really well if you're dealing with reasonable people. The problems that come up, generally are when one of the parties, either management, the employee, or the Union is taking an unreasonable position. It's not unusual; it is just going to have to be dealt with.

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Grievances should be consolidated when two or more employees file individual grievances involving the same or similar facts, events, and the same or similar issues arising out of the same incident. If the same thing happens to more than one employee they should consolidate it and

submit it as one grievance. This can also be done by Labor Relations. When the formal grievances submitted to them and they see it is the same thing with multiple different grievances they can consolidate it.

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We have four steps of the grievance procedures. There is the informal grievance process which is just the discussion between the employee and supervisor and the parties have agreed that the discussion can take place either verbally or electronically or they can give a written discussion to the supervisor. The other 3 steps are a little bit more formal and we will get into those in more detail later in the presentation.

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Like Peter said, informal grievance can be a conversation or it can be submitted in writing. The purpose here is to start a conversation between the employee and the supervisor and try to resolve the issue without having to take any further formal steps. This is still the same process that we had under the Red Book. It's important for the employee to make sure the supervisor knows that it is an informal grievance, they know what the concern is and how the employee would like it to be resolved. In some cases, the supervisor will not have the authority to resolve the grievance. If that is the case the grievant needs to be notified immediately. If the supervisor does have the authority to resolve it, he or she will issue a grievance response within 10 calendar days. If the employee is not satisfied with the response he or she will have 14 days to submit a formal first step grievance. Is important for anybody filing a grievance to read through the procedures in the article and be careful to follow them correctly. Timeframes vary and we will get into those in more detail in future slides; however, it's important to know that you have 30 days to grieve informally. At anytime, during any step if both parties agree the deadlines may be extended.

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Sarah makes a good point. The grievance procedures are really driven by specific timelines and it's important for all the parties to adhere to those. We will lay those out as the presentation goes on.

One of the things we did when we set up this grievance process is that we required all formal grievances to be filed in writing and forwarded to Labor Relations and they also have to be signed by the employee.

Notices have been sent to all the work units on who the Labor Relations designees are for those grievances. Currently in the Western Region it is Peter Brownell and in the Eastern Region it is Frank King. Any questions, you can go to the Labor Relations Website, you can contact your local Union representative, or you can ask your supervisor.

What we have here is a list of requirements for a formal grievance. Regardless of whether it is the employee or the Union putting the formal grievance together, all of these elements need to be contained within that formal grievance.

Number one, we are looking for the name of the management official alleged to have committed the action being grieved. It will be helpful to include the Title, grade, and organization. Second, specific articles and sections of the agreement, alleged to have been violated. Number 3, a statement of the circumstances giving rise to the grievance including the date of the alleged violation. I think it's very important for grievant or Union be able to articulate what is happened. And what normally happens in a grievance process, because many times people want to get the process initiated, information is left out. It's terribly cumbersome to have to engage in this discovery process if either Step 2 or Step 3 of the grievance procedures, I think it's very important for the parties initiating the grievance to layout all the facts so that the management representative will have a clear understanding of just what happened. Who, what, when, why and where.

Another thing to add in on that same note is that a lot of times employees think they don't need to put that in there because it's their supervisor who was involved and they already know the details. Think it is important to recognize there are 3 steps to this grievance process. When it gets to a higher level, you don't want to have to dig for that information. Write it up, for the benefit of somebody who was not there.

Well said.

Number four. The name, position, grade and organizational unit of the grievant with address and telephone number.

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You also need to include the date and name of supervisor that the informal grievance was conducted with; the date the grievance was submitted to Labor Relations when it became formal; the name of that Union representative if there is one; and the general and specific release and corrective actions sought in the grievance. These are the remedies you request to make you whole.

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The next section of Article 16 deals with representational rights and formal discussions or formal meetings. A formal meeting is normally a meeting between one or more members of the bargaining unit and/or their representative and one or more members of management to discuss a grievance, general personnel matters, or conditions of employment. These kinds of meetings we call "formal meetings" and it requires the supervisor to provide notice to the Union of such a meeting. Once that notice is provided to the Union, the Union will make a determination on whether that's a meeting they want to attend and the Union can designate whomever the Union wants to participate in that meeting.

Sarah and you might want to add some information about formal meetings at this point.

The Union should be notified in advance of the formal meeting if you know it's going to occur. That notice is generally given by e-mail; that's perfectly acceptable. Like Peter said, the Union is going to choose who the best person this to be the representative at that meeting; it's not going to be chosen by the employee or by the supervisor. If you don't have a local branch to notify, then the Union representative would be the regional vice president and they can participate telephonically.

A Union rep or local president is entitled to a reasonable amount of notice. That is not 10 minutes before the meeting. It will depend on the circumstances but that word "reasonable" continues to pop up in this agreement.

Employees have the right to be represented and advised by a Union representative. Again, the Union has the right to attend any formal meeting which the employee may attend during the processing of a grievance. And 3, the Union should have a seat at the table for the discussion or settlement or adjudication of the grievance. Specific language from the contract states that the employer will give the Union advance written copy of the grievance and grievance answer, notice of the adjustment, and an opportunity to bargain to the extent permitted by law, if the Union assures the adjustment may have impact on working conditions of bargaining unit employees, other than the grievant. The adjustment must be consistent with the terms and provisions of this agreement, and any supplements thereto. For example if the requested remedy in a grievance is to not have the grievant work overtime for the next 90 days, you can understand that the other employees in that work unit, this would have a direct impact on those other employees. It is the role of the Union to represent those other interest. Based on my experience, many times the Union brings a lot of clarity to the process and prevents fallout from improperly adjusted settlements.

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All grievances under this article must be filed within 30 calendar days following the date of the incident, which gives rise to the grievance, or the date upon which the aggrieved became aware of the matter or incident out of which the grievance arises. We also have continuing grievances which are grievances continuing in nature may be raised at any time. A continuing grievance is something that we often don't agree with Labor Relations on. To try to give an example, a continuing grievance could be a pay issue. Let's say, it's not apparent but somehow every pay period for the past 3 years you have been shorted one dollar. Once you discover this you can grieve for the pay from the past 3 years, you are not limited to just the past 30 days, but bear in mind there is probably going to be some heated discussion between the Union and Labor Relations to really nail down whether it is a continuing grievance.

We like to think of it as robust debate.

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Things that may affect the filing deadline would be in a case where a request for information was submitted by the Union. The contract provides that a grievance may be amended at any time if new information is obtained in response to a 7114 B 4 request submitted prior to invocation of arbitration. The Labor Relations Branch Chief will be promptly notified of the amendment prior to arbitration. A grievance amended based upon information received in response to 7114 B 4 request submitted after invocation of arbitration may be returned to the Step 1 Responsible Management Official unless the Parties have mutually agreed to a different course of action.

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If a grievance is returned because it was filed at the wrong level (or) there is missing information, the time spent up until that point is not held against the employee 30 days. If a grievance gets returned, the 30 days start over. It is very unlikely that it would be filed at the wrong level because initially it filed with Labor Relations and they determine who you are going to send it to next. Then every grievance response should say who the next person is that you sent it to. The only time the employee will have to determine who the next person should be is if they did not get a response at whatever level they are at and they have to choose who it goes to for the level.

Mutually agreed to conflict resolution procedures will hold all time frames in abeyance. This is something that is new. We did not have that abeyance before and for people who are familiar with EEO, you know that the timelines do not stop. In it case of the grievance it does. We also have a conflict resolution article in the Green Book and you can check that for some more details. As always timelines maybe mutually extended.

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The conflict problem resolution, that article is Article 18 in the Green Book.

There are grievance procedures for management (and) for the employer. I'm not really going to spend a lot of time or energy talking about those. The grievances may be initiated against the Union. You cannot file a grievance against an employee and it is a formal grievance process. If you have questions or concerns about an employer initiating a grievance, you need to talk to your manager, talk to the regional offices and certainly get a hold of Labor Relations.

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Information requests. Management is obligated to provide information if it is requested, for the most part. Under certain circumstances, it can be denied but before you do that, please contact Labor Relations to make sure it is legitimately deniable information. Something to keep in mind, only the Union can submit an information request, so if an employee is filing a grievance without a Union representative, they're still going to have to talk to the local representative to get them to submit an information requests if something is needed. Anyone who is not familiar with preparing an information requests, we encourage you to contact your regional vice president because there are certain nuances that should be followed in preparing one.

When an information request is submitted, timelines are held in abeyance. This is a big change. Under the Red Book timelines did not stop. And then once the information is received, there is a 10 day period to amend the grievance based on the new information.

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We have pretty much laid out the informal grievance process; this is a verbal or written discussion between the employee and/or the Union rep and the supervisor. Step 1 of the formal grievance procedures: If there is no satisfactory settlement reached informally, or if there is no informal decision within 10 calendar days, then a written signed grievance must be presented to the servicing Labor Relations Specialist or designee. And when that grievance is received by LR they will acknowledge receipt of it.

Next there will be a Step 1 meeting between the parties, normally not later than 10 days after receiving the grievance. At this point in the process the parties may invoke mediation, which will be at no cost to either party, which also must be concluded with 30 calendar days. If no mediation is elected, then a decision should be issued within 21 days from the date the grievance was received. That decision will also include the appeal rights and the name of the Step 2 management representative.

In some grievances, the Deputy Administrator may be the Step 1 designee. That will be the only formal step in the grievance process. Once the Deputy Administrator issues the decision, the Union would have the right to invoke arbitration. Grievances concerning the removal of an employee are one of those grievances that at the employee's option may be filed directly with the Deputy Administrator. The reason for this is that the parties, based mostly on the Union's insistence, that in the cases of removal is imperative that the process move along expeditiously because the employee is going to be financially disadvantaged if they are effectively removed. To address that concern, we came up with the option for the employee to expedite the process and file the grievance, on at removal decision, directly with the deputy administrator.

Sarah, do want to add anything about those two processes?

Nope, I think you covered it.

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After the employee gets the Step 1 decision, if they are unhappy or don't feel it was resolving the issue, then the grievance has to be appealed within 14 days and sent to the Step 2 designee or 14 days from the date the decision should have been given to the employee, whichever is shorter. The employer will acknowledge the receipt of the grievance, that is usually written and in an e-mail. The parties may conduct a meeting to discuss the grievance within 10 days. This is new language. This is something the parties always had the right to do under the Red Book but we like to encourage conversation and felt that by building this option in and laying that language out, hopefully it would encourage people to take advantage of it. The Step 2 decision is going to be provided within 21 days of receipt of the grievance and that decision is going to contain either appeal rights to arbitration or who the Step 3 management official is going to be. All grievances end with the Deputy Administrator so that would be if the Deputy Administrator was the Step 2 management official, that is why you would have the appeal rights to arbitration.

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We will talk about Step 3, the formal grievance procedure. It's worth noting, since I've been with APHIS Labor Relations since 2005, very few grievances have actually make it to Step 3 and/or to arbitration. I just don't want to discount the mediation process or the full disclosure process in the early Steps of the grievance procedure because many of the grievances that are initiated do get resolved early in the process.

I agree, Peter. We have had a lot of success settling some grievances that both parties can live with, maybe not everything both parties wanted but we have had quite a few good success stories in resolving it without taking it further.

That is why it is important to get all the information on the table and engage in robust discussions of the facts of the grievance, from both sides.

If it makes it to the formal Step 3, it is incumbent upon the grievant or the Union the moving party, to appeal it to Step 3 within 14 calendar days of receipt of the decision. Or within 14 days of when the decision was due. Whichever is shorter. Step 3 designee will acknowledge receipt of the grievance within 14 days, the parties may agree to mutually agree to a meeting to discuss the grievance. And a decision will be issued within 14 days, from the date of receiving the grievance.

The decision will be forwarded to the grievant and the nation pres of NAAE and will include the Union's right to invoke arbitration.

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The slide puts together the confusing new timelines that we have that are very different, in some respects, from under the Red Book. This slide was created by Frank King, Eastern Region Labor Relations Specialist. We think you did a great job. We have just this slide posted on our website which is going to be listed on the upcoming slide under resources for local branches. This is something that I think most of us have already printed out and posted so it's easy access. Basically you can see in different colors on each step it gives employee timelines and management timelines. They do alternate a little bit as you go up you can clearly see which one would be the timeline you need to follow.

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If there are any questions about any of the information that was covered during this Webinar, we have contact information for Labor Relations and NAAE.

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Here's a list of the current Labor Relations Specialists. You can see myself listed and the phone number. And Ron Dale, we both service the Western region. Frank King and Robi Maple that service the eastern region and there is also a very good link to the Labor Relations webpage. You can find an electronic PDF version of the Green Book. Any other agreements signed off at the national level between NAAE and PPQ.

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This is the national executive committee for NAAE. it has all of our names and phone numbers. At the bottom, it shows our Union website which also has all of this contact information listed there.

That concludes webinar 1 of 5 for the Green Book. If you have any questions, you can contact Labor Relations at the numbers provided or NAAE at the numbers provided there.

Thank you for joining us. If anybody has any questions about the recording of this Webinar, contact PPQ AgLearn Administrator.