

PPQ and NAAE Green Book Agreement Part II of V

Webinar Recording Transcript

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Hello everyone, this is the PPQ and NAAE Green Book Agreement, part two of part five webinar recording. I'm going to turn it over now to Pete Brownell, APHIS Labor Relations and Sarah Rehberg of NAAE.

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Hi, this is Sarah. Today, we are going to go over eight different articles and give you the highlights of the articles that are listed on this slide.

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Hi, this is Pete Brownell, and we are going to start with Article 1, General Provisions. This is where we get the authority to negotiate the agreement. In Section 3, it talks about the coverage, and this agreement applies to all permanently employed professional PPQ officers, including SITC officers, and all permanently employed nonprofessional employees at PPQ. Other than clerical, secretarial, and administrative employees, employed in or by USDA APHIS PPQ. Those excluded are all other employees, employees engaged in federal personnel work, other than in a purely clerical capacity, supervisors and managers, as defined by the statute.

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Article 3, Recognized Levels of Authority and Responsibility. Section 1, is basically the same as it was under the Red Book, but it did have some cosmetic changes. Basically, it says our practice is to settle each issue at the point nearest its origin, and at the management level that has the authority to deal with the issue. Issues are not elevated to a higher level unless they cannot be resolved. And no issue will go outside of PPQ until the Regional Director and Deputy Administrator have had a chance to fix it. In Section 2, we did add an additional level, there used to be three and now there are four. We included the State Plant Health Director and the NAAE designee in there because they weren't always included in the previous three levels.

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Here we have a little diagram of what the different levels of authority and responsibility are. At the first level, it's going to be the Port Director or OIC as applicable. Then, in some cases it could be the State Plant Health Director in those appropriate states. And the union counterpart would be the branch president, or the representative designated by the union. And as Sarah referenced,

at step two, we have the State Plant Health Director or other management designee. And the union will designate the appropriate union representative at that step of the process.

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Then we have the Regional Director and the NAAE Regional Vice President will be working together on issues, and then finally the Deputy Administrator and National President or designated union representative. By designated union representative, that means any employee within the bargaining union that the union has identified in writing to represent the union. For the most part, it's going to follow what we have here, but sometimes different circumstances require different people. Customary and usual representation and other labor management activity will be conducted at the levels about. Employer and union acknowledged there may be circumstances in which communications with other organizational levels may be desirable. Again, that will be case-by-case.

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Section 3, Election of Levels. When a proposed changing working conditions impacts more than one work unit, which is not covered by a single local, some locals are going to represent multiple work units, some are just going to represent one, then the NAAE Regional Vice President will be the initial point of contact. But when the proposed change impacts more than one region, then the National President will be the initial point of contact.

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Here we talk about the rights and obligations of the employer. I.e., the supervisor, the manager, the OIC. The statute gives the employer the right to determine mission, the budget, the organization, the number of employees and the internal security practices of the employer. In addition to those, the employer has the right to hire, assign, direct, layoff, and retain employees in the agency or to suspend, remove, reduce in grade or pay, or take other appropriate disciplinary actions against employees. Managers also get to assign work, make determinations with respect to contracting out work, and to determine the personnel by which the agency's operations will be conducted. With respect to filling positions, management gets to make selections for appointments among properly ranked and certified candidates for promotion, or any other appropriate source. And then finally, managers get to take whatever actions may be necessary to carry out the agency mission during emergencies. In section 2, under Obligations to Inform, the very important thing or point to be made about pre-decisional involvement.

What the contract says is that the employer recognizes, that the union may have valuable insight into pre-decisional discussions concerning conditions of employment, and may seek union input with various pre-decisional activities. This does not constitute formal notification to or negotiation with the union over changes to conditions of employment. As always, the union retains the right to request consultation in accordance with Article 13, Consultation. This applies not only at the national and regional levels; this also applies to the local level. It may be helpful to think of this as a two-step process. Pre-decisional involvement is synonymous with

consultation. First, before we make a decision, on the change or the action that had to be taken by management, we will ask the union for their input. Pre-decisional, in consultation with. Once the union has provided that input, management is going to make a decision on what the appropriate course of action is. At that point, once that decision has been made, management will give notice to the union and the union may request to negotiate and submit for proposals. What the contract says, the employer agrees to notify the union of any substantive changes in conditions of employment proposed by the employer. The notice will be clearly marked as notice, and will be sufficiently specific for the union to respond with changes clearly identified. The two-step process would be, seek the views of the union prior to making a decision.

Consider that input, and then secondly, make a decision on a course of action and then provide notice to the union. Sarah, do you want to add anything about that? I think that is an important point.

I think that is an important point. I think you made it very well. Was that this presentation we actually going to time frames? I think that is the end of part three.

I think that is grievances. It was Negotiations.

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For Section 3, Official Communication between the Parties. Computation for a response begins the date after receipt. This is not really a change, but under the Red Book, we were not real specific, and there were some gray areas. Since we got another chance to fix this, we spelled it all out so there are no misconceptions or missed timelines because of not understanding; this makes it more clear. The communication postmark hand deliver, expedited commercial or private delivery service or sent by email or facsimile transmission on due date. We always used e-mail. We have used e-mail pretty much since we got it. But that was not written into the Red Book, so we wanted to make sure all the options were covered. Also, if the due date falls on Saturday, Sunday, or holiday then the response is due the next federal workday. We did not have that under the Red Book, if the due date was on one of those days, we would send it the day before. So we would end up losing a day or two.

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This article talks about Employee Rights. And in Section 3, it talks about the right to union representation. There are two specific cases in which an employee is entitled to union representation. I will just talk about them out of order here. The first would be an examination in connection with an investigation. I usually say an investigative examination. We have come up with a form, NAAE and PPQ, in those situations in which the manager or investigator will get the form explaining the Weingarten Rights to the employee. Essentially, the Weingarten Rights have to be chartered by the employee. The employee first will have to have a reasonable belief that disciplines will result from that meeting. And secondly and most importantly, the employee has to trigger those rights. They have to request union representation. This is much different than

Miranda Rights that you see on television, in which the police officer has the obligation to inform the individual of those rights. Here, the employee has to initiate those rights by requesting representation.

The second right to union representation would be for formal discussions. And the parties actually define what that situation would be in the contract, under Section 3. We are talking about an informal discussion between one or more representatives of the employer. And one or more employees in the unit or their representatives. Essentially, any time you have a supervisor, manager, OIC, or other representative of management and an employee, and the purpose of the meeting is to talk about a grievance or any personnel policy or practice or other general conditions of employment. I recognize that this is a big change from the way things have been done with PPQ because we didn't always recognize that these were formal discussions taking place. For PPQ, there are probably multiple formal discussions taking place every day. And I think it's incumbent on the supervisors, under this new contract, to recognize that when they conduct a formal discussion, when you talk to an employee about their grievance, that's a formal discussion. The employee does not have to request a union representative. It's incumbent upon a supervisor/manager to notify the union that there is a formal discussion, and then it's up to the union to make a decision on whether or not they want to participate in the meeting. And when we talk about notifying the union, we talk about reasonable notification. It's not going to be up to the union to drop what they are doing so they can participate in that meeting. At least, not normally.

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Section 4, basically reiterates employees' right to not have to join the union. No one has to join the union. Section 5, talks about mutual respect, and the contract language actually says, the parties recognize that employees and managers will conduct themselves in a professional and businesslike manner, characterized by mutual courtesy in their day to day working relationships. Section 6, talks about the obligation to obey supervisory workers. And everybody should know that they have to follow orders that are given to them by a supervisor, and if it's lawful, even if you don't agree with it, obey at and file a grievance later. However, if the employee believes the order is illegal, if they believe it is a threat to their personal safety or to the safety of others, and there are some options. But recognize that choosing to not follow a supervisory order is risky and it should be an absolute last resort and that you might get disciplined for it. And then we will fight about it later. That you want to be sure. If you aren't 100% sure, again, follow the orders and file a grievance later. Ideally, you would have time to try to work this out before you have to follow that order. Go talk to your supervisor about it. That's the first thing that you should do. You can also give your supervisor a written statement expressing your concerns, if you're not comfortable talking to your supervisor. You can call the office of Inspector General Hotline, and the phone number of that is listed in the appendix of this agreement. Or again, just keep talking about it. Section 7, talks about representational right. Just because there is a contract that doesn't mean an employee can't use a different representative other than the union. They can't use

another union, that they can have a lawyer. They can choose a nonunion employee to be the representative. Employees can basically use any route that is available to resolve an issue to the employees through various government regulations, not just grievances.

Section 8, Peter talked about this. Employees can file a grievance without the union. The union has the right to be in that grievance related meeting because remedies might affect other people in the bargaining unit. This counts even if the employee says I don't want the union there. Hear what they say, but the union gets to be there if they choose to.

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Just to piggyback on what Sarah said, it's very important to recognize that it's not the right of the employee to have a union representative there when you're talking about a grievance. The union represents all the other employees in that work unit. So, when you meet with that employee to discuss that grievance, the union is going to participate in that meeting to represent the interests of all those other employees. Continuing with Article 6, Employee Rights. It talks about in Section 9, the Right to Disclose Information concerning a violation of any law, rule or regulation. Mismanagement, gross waste of funds, etc. And they get to do this without fear of reprisal when they engage in the disclosure of this information. Section 10, is Notice of Complaint, and I think the best way to describe that is to actually read the contract language. It says the employer would notify an employee of a written complaint received by management if warranted. And then it goes on to say warranted complaint for the purpose of requiring notice. Under this section, it is defined as a written statement including any oral complaints reduces to writing by the employer, by an identified complainant indicating to satisfaction with an employee by reason of conduct, appearance, or carelessness or impropriety of an action taken by the employee. Now, the employer will provide a notification as soon as practical following receipt of the complaint. Normally, that is going to be after the investigation into the complaint. It says upon request, the employer will furnish the employee with a copy of the complaint or if the complaint involves more than one employee, that portion of the complaint related to the requesting employee.

Section 11, talks about Search Rights. And it says that when the employer exercises its legal right to search an employee's possessions, at the worksite, and we are talking about the desk or the locker, and they're going to search those in a noncriminal manner. Then the employee and his or her representative will be allowed to be present during that search. It talks about postponing that search if the employee and or the employee's representatives are not present at the worksite. Until such time as they are both available, unless such delayed would materially impede the purpose for which the search is being conducted.

Section 12, there's a little section about gift giving. Makes it clear that all these different programs that the federal government participates in, such as blood drives, savings bonds, or CFC, they are all voluntary. And contributions are gifts for a supervisor or management officials or even fellow employees. They will be strictly voluntary.

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Article 7 is on Union Rights. Section 1, basically states that an NAAE is the exclusive union representative for the employees in the NAAE Bargaining Unit. The union represents all bargaining unit employees regardless of their membership status. Section 2, again it discusses the union's right to be present at formal discussions, which Peter has said, any meeting with at least one manager and one employee that discusses a grievance or personal, policy, practice, or conditions of employment. The union should be given reasonable advance notice, and that can be done by e-mail. They should also be given any documents that are going to be discussed at that meeting in advanced. During the discussion, the union representative does have the right to actively participate. They are not just there listening. But they will not disrupt the discussion. Section 3, talks about presence at examinations. Before or during any examination of an employee, the employee may request the union representative if he or she believes the examination may result in discipline. I know we covered a little bit of this already. Like Peter said, basically your Weingarten Rights, but there should be a Weingarten notice posted in every work unit. That is a requirement. We encourage people to take a look at it. Even though it is posted, we still have some confusion. It is the employee's responsibility to ask. The supervisor does not have to say do you want a union representative? The other thing to point out is the employee is the one who has to believe that it may result in discipline. Doesn't matter if the manager says I don't intend to. It's all in how the employee perceives it.

Section 4, talks about presentation of views. The union can present its views either orally or in writing to management on concerns about personal policies and practices and working conditions. It does not have to be in relation to a change. Section 5, says the union is not obligated to represent employees in that statutory appeals. That's where we are talking about EEO and Merit Systems Protection Board. We are not obligated to, but it's up to the individual union representative if they choose to.

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Section 6, talks about addressing new employees. The supervisor or manager at the local level will give the union representative as much advance notice as possible of a new employees first day of duty. Giving them the name, position, and work location. The union will also be notified of any employee employment orientation session and be allowed to participate. The union representative will also be provided a mutually agreed reasonable amount of time to address new employees at their permanent stations as part of the employee/employment orientation session. I think what we have done in the two regions; they have put together a CD that has all the necessary information for new employees. Part of that CD is going to be the new Green Book for NAAE represented bargaining unit employees and also a copy of the annual Weingarten notice. When a new employee comes on, they will be given copies of all this useful information. Section 7, talks about the right to information, and it's the right of the union under 5 USC 7114 B4 to request information that is reasonably available and necessary for full and proper discussion understanding, and negotiation of subjects within the scope of collective bargaining. Including

but not limited to the investigation preparation filing, and prosecution of a grievance or an unfair labor practice. It does not constitute guidance, advice, counsel, or training for management officials or supervisors relating to the collective bargaining agreement. I just want to make note here that if you receive a 7114 B4 request for information from the union, you should immediately contact your manager or the regional office and/or labor relation and get some guidance on how to respond to that request. Sarah, anything you want to add about information request?

Yes, actually. If you're new to information request, contact your regional vice president or anyone on the executive committee for guidance on how to put one together. There are some specifics that need to be included.

Only the union can ask for information under the statute. It would be inappropriate for an individual employee to submit that type of information request.

You are right. If you are filing a grievance and you don't have a union representative, you don't want a union representative but you need to get some information, you will have to talk to that union representative to get them to submit an information request.

Very good. Section 8, Management Team Meetings or my Mike Randall provision here. It was at Mike's insistence that we put in there. Any issue presented by management at a management meeting in which the designated union representative is participating. And is meant to constitute or serve as notice to the union will be clearly identified in writing at such notice. If you are having a management meeting and there is a union representative there, and all of a sudden it dawns on you that you need to give the union notice before you take some action, you're going to have to provide the notice in writing, and sufficient detail so that the union can respond.

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Article 9 is on Union Representatives. Section 1, says that management will not interfere, discriminate against any employee for asking for a union representative. Section 2, talks about the designation for a representative at the local level. Some locations will have a local branch, and they can designate union representatives for that location. If there isn't a designated representative locally that management should contact the regional Vice President. If there is not a local branch, then the designated union representative for those employees would be the Regional Vice President. Section 3, Notice to the Employer. Basically, every year the executive committee of -- provides labor relations with a list of all the active branches and their local president. We also tell management of the national officers are. They should not be a secret to anybody, any of the managers in these work units. People should know who their union reps are. And they change. They can be changed anytime. Sometimes they do, and when that happens we provide written notice to the appropriate level.

Section 4, Temporary Supervisory Positions. Not sure if this is really going to happen too often anymore, but if there's going to be an employee chosen to be a temporary, unless the union

representative volunteers for, they should be the last person chosen if there are others. Because if a union representative is given a temporary promotion, they cannot do any union work during that time. But, and this is a big distinction, if a union representative as an acting supervisor, we are not talking about any change in pay and is just for a brief very period of time, they can still do union work if time permits. If my manager is out for the weekend, he puts me in charge because he is on leave, I can still do union stuff. I will do what I need to do as an acting supervisor, but that doesn't mean that I can't talk to the union, send e-mails, anything like that.

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Article 11, Official Time. Section 1, contains some general information, mostly from the statute where talks about how providing official time safeguards the public interest, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlement of disputes between employees and their employers evolving conditions of employment. Now, the parties also taken from the statute is the parties fully recognize the employee representatives of the union are voluntary, and whatever official time is spent in the conduct of labor and management activities, is spent as much in the interest of the employer as that of the employees. Reasonable official time will be granted for all representational activities. Next we will talk about what those are. Excluding internal union business, in accordance with the provisions of Article 11. Now, in Section 2, the representational matters, we talk again about formal meetings. Again, formal meeting is any meeting between a representative of management, and one or more employees and/or their representatives concerning a grievance or general personnel matter or conditions of employment. For those meetings, for those formal meetings, you're going to have a union representative, and they will be on official time. In addition, representational matters also include oral or written replies to notices of proposed discipline.

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Continuing with the activities that employees should get official time for. Would be statutory or regulatory appeal procedures. Here, we are talking about Office of Special Counsel, Merit Systems Protection Board, EEO, that type of thing. They should get official time for investigatory examinations; presentation of grievances at related meetings, committee meetings, and conferring employees, employees meeting with union representatives, Federal Labor Relations Authority and this is where you would be filing unfair labor practices, Federal mediation and conciliation service, that's who we would go to for mediation, and Federal Services Impasse Panel, this is where you would go to for a negotiation for an impasse. And also presentation of unfair labor practices charges.

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Easy for you to say. Continuing with the list, we have number 11, responding to management communication. Number 12, preparing reports required by the federal government of the union, and the number 13, contacting and meeting with members of Congress. Section 3, talks about employee official time. And these are the situations where you would provide the employee with

official time. And the first is for a grievance meeting. If the employees got a meeting with their union representative or with the supervisor to talk about the grievance that would be a situation in which you would grant them official time. They also get official time for arbitration hearings, and they are granted official time for all replies to proposed disciplines. When you issue that notice of proposed discipline, there are procedures outlined in that to respond in person or in writing to the deciding official and they would get official time to reply.

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Employees will also get official time for statutory or regulatory appeal hearings. This we already talked about, meetings to reply to a denial of a within grade increase and for investigatory examinations. Section 4, talks about per diem and travel. Basically, travel and per diem will be reimbursed for union representatives on official time at activities that are listed in Sections 2 and 3, with the exception of negotiation. Negotiations have separate rules for travel payment, and those are covered in section 5 of the contract and on the next slide.

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When we are talking about official time, where almost without exception are talking about a reasonable amount of official time. And in order to determine what is reasonable, there has to be some dialogue between the supervisor or manager and the individual requesting the time. What is the time for? How much do they need? When do they need it? And in a perfect world, both of the reasonable parties would come to a reasonable understanding of what is a reasonable amount of official time. Recognizing that it's not a perfect world, this is where a lot of the conflict in labor relations takes place, determining what is a reasonable amount of official time. All I can say, and Sarah you can certainly chime in, if you get request for "reasonable official time," and you are having difficulty addressing that, I would suggest you contact your manager and/or labor relations.

Peter, I think people need to keep in mind when that happens, labor relations or the manager is going to be reaching out to the executive committee to say "we have this going on, do you think this is reasonable?" And we can talk to the local union representative and try to get things moving forward.

Right. And I just want to add that in my experience as a Labor Relations Specialist, is not just the employee or the union representative that is unreasonable. As many times as not, it's the supervisor or manager that is being unreasonable in granting official time. It takes two to tango. Continuing with the slides, on section 5, we talk about representation in negotiation. All union negotiating members are going to be granted a reasonable amount of official time. You will have equal number of outside local negotiators, so for example you are conducting negotiations in Chicago, and management wants to bring in someone from Los Angeles, then the union would be entitled to bring in someone from outside Chicago also. And that we also have a section that talks about the national negotiation, but I will not talk too much about that. There's also a section about training in the new Green Book. And the parties have recognized that there is a need for

this training. Here's what we did. We said that it's appropriate to give official time for training that is sponsored by the union or other labor organization. We've also said that official time for training in labor relations sponsored by other government agencies. And what we also did with PPQ is we set aside 480 hours, a separate bank if you will, 480 hours of training per union representative. The union, they are able to have 480 hours for whatever kind of training and labor relations they think is appropriate. But we've also agreed to set up joint webinars, and I think we agreed to 2 webinars in the eastern region, 2 joint webinars in the western region, on an annual basis.

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Section 7 deals with the national executive committee. Basically NAAE has a bank of hours that we use nationally for official time activities. And that's what executive committee members attendance at meetings, their time would come out of this. That's for official time, but it's not for internal union business. Examples of internal union business would be an election activities, dues related discussions and recruiting. We do not get official time for that. However, there is a LM form; LM4 is a Department of Labor form that is required of each branch. It seems like it would be something that's internal but it's an official time activity. Section 8, local union functions, each local is going to request and receive reasonable official time for the basic day to day representational activities. Locals can also negotiate additional amounts of time for their local officer, which may include some kind of a local agreement. This would mean set amounts of time and may include office hours for some of our larger locals. Section 9, Performance Evaluations for union's representative have to be based on their performance of PPQ duties, any time that they spend in union activities cannot be held against him.

Section 10, Accountability. Official time request should be recorded on your T and A. This is so that it can be tracked, when a union representative request official time; management should promptly respond and if it is denied in whole or in part that denial must be in writing. If the union representative requested they must state the reason for the denial. If it's granted, the time goes on your T and A with a separate number code. Section 11, Scheduling Adjustments. Basically, as long as it does not affect the mission, management will make reasonable adjustments to shift and work assignments so that union reps may attend labor-management meetings and conduct union activities. These activities do not preclude union reps from participating in local overtime.

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Article 13, Consultation. Obviously, the parties thought consultation was important. There's a whole article dedicated to it. I think it was Article 6 in the Red Book, it had five sections. We have expanded that now to include six sections, and it is Article 13, Consultation. I know everybody already knows what consultation means, but consultation is to discuss with or to seek the views of another party. It's really very simple. Union, what do you think about this idea? And the union would response, you would give that consideration, and then as a supervisor or

manager, you would go ahead and make a decision on what's the best way to move forward on that issue. In the contract, we've actually defined consultation. It says for the purposes of this article, consultation will mean a verbal discussion or written communication between the representatives of labor and management, for the purpose of exchanging views on matters of concern to the bargaining unit and to the employer. Then it goes on to say that nothing in this article would be construed as a waiver of the union's bargaining rights. Again, two separate obligations. To consult with pre-decisionally and then secondly, to provide notice over the change and/or negotiation. Section 2, talks about the latitude and method of consultation. Normally, it's going to be conducted verbally but if it's mutually agreed to in writing, upon the union's request for written consultation, the employer will transmit the agenda and issue format to the appropriate union official. Although a little more awkward, it can be done in writing. But there's nothing wrong with having that discussion verbally.

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We also have Section 5, which covers consultation at the local level. Locally, consultation should occur at least quarterly at a place determined by management, with the union representatives there on official time and if there is any travel, and the agency would pay for it. Not too many of our locals are taking advantage of this. We did have a local consultation provision in the Red Book. This is something we encourage strongly. All you have to do is request it. Yes, there was a procedure for written consultation, but that really isn't the intent. The intent is to sit down and start talking to each other. One idea is to schedule the meetings for the year at the beginning of the year so that as everyone's schedules fill up, you've already got your quarterly consultations on the schedule.

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We also talk about consultation at other levels. It to be held with -- at the option of the State Plant Health Director, the employer would determine the meeting place, and of course, the union would get reasonable time, reasonable official time to prepare for the meeting and to participate in the meeting. Travel costs to be paid by the employer. I know travel costs is a various sticky wicket at this point, because of the budget constraints and I want to acknowledge how successful PPQ and NAAE have been in keeping these travel costs to a minimum. We do a lot of business telephonically; we've agreed to use these webinars to rollout the training, because it's much more cost effective. When we talk about consultation at other levels of the organization, I think it's also important to recognize the importance of keeping the travel cost to a minimum, and looking for new and innovative ways to take care of business.

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Again, this is the list of the eight articles we covered. We try to give you the highlights from each one in the presentation.

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If you have any questions about the information covered during this webinar, please contact APHIS Labor Relations and NAAE.

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Here's a list of contacts for APHIS Labor Relations. There is myself and the phone number; I am in the western region. I work with Ron Dale, who is also in the Western Region. And then in the Eastern Region, you have Frank King and Robi Maple. Also included is a link to the Labor Relations website. When you go to this link you can find a copy of the new Green Book. You can find a copy of the appendix to the Green Book, and all the different MOUs that have been signed off between NAAE and PPQ.

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This is a list of the NAAE Executive Committee and our phone numbers. At the bottom is the union website and all of our names and contact information is also listed there.

That concludes webinar two of five of the Green Book. If you have any questions again, please contact APHIS Labor Relations or NAAE at the numbers provided. Thank you for joining us, and if you have any questions regarding the recording of this webinar, please contact PPQ AgLearn Administrator. Thank you.