

PPQ and NAAE Green Book Agreement Part V of V

Webinar Recording Transcript

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Hello, everyone and welcome to the PPQ and NAAE Green Book Agreement part 5 of 5 webinar series. Today we have Taryn McCaughey from employee relations, going to give us our presentation for today. This presentation is brought to you by not only employee relations but also by APHIS Labor Relations. I'm going to turn it over to Taryn now to introduce herself and proceed with the presentation.

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Hello, everybody. My name is Taryn McCaughey and I am the Employee Relations Specialist that services PPQ in the Western Region. Today we're going to be discussing eight articles from the new collective bargaining agreement between PPQ and NAAE, which you know by now as the Green Book. There are quite a few changes, the Green Book contains eight articles which you will see outlined on your screen that touch on or cover employee relations type issues. The Red Book previously contained two, Article 12 and 21, which briefly explained representation rates, and due process as well as performance. As you can see, there's a lot more information covered in the Green Book.

Quite a bit of the information we are going to be covering today will sound like normal procedure for those of you who have recently worked with your Employee Relations Specialist. However we will still be highlighting those changes because they are new to the Green Book. As you may have already noticed the presentations are an outline form. For this presentation the significant changes are those that are highlighted in orange.

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Article 15 starts us off with one of the bigger changes and something that we need to ensure that we are aware of. As discussed in section one, written notice to the Union, two copies of nearly every action disciplinary and some non-disciplinary that you will be issuing to employees you must provide them with two copies. One of the copies must contain a statement stating "this copy may at your option be furnished to your NAAE Representative." So this is a change in a moment we will talk about the actions that are specifically covered under the Green Book. However it is important as management and first line supervisors specifically who are most frequently issuing these types of documents to employees to ensure that two copies are provided. The employee relations templates have been updated regarding those changes so we have a couple levels here to ensure that these documents are being given to the employees appropriately.

The actions covered a reduction in force, a leave restriction, a denial of a within grade salary increase, fitness for duty examination, reassignment, transfer, adverse action and disciplinary action. As you can tell by this list nearly every action coming from employee relations that you will be working with employee relations on, that you he must provide two copies to the employee. The only exception to this is the letters of caution.

As we move on to section two, Section 2 discusses changes in personnel practices. The employers required to send copies of changes in personnel practices and policies to each employee. Then place them on electronic bulletin board for a period of 12 months. This allows all employees to be given ample notice of any changes.

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Section 3 discusses notice of representation and states that the union is the exclusive Representative of all employees in the union and that the employer will notify all employees of this. Section 4 discusses information with the national contract. The employer is required to distribute to each new employee during their orientation a copy of this agreement, the Green Book. The union will also provide distributions to employees. Only requirement is to ensure that they do have a copy of the Green Book and you can contact your local regional office for copies of the Green Book, they have been put on CD for distribution to the employees.

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Section 5 discusses the payroll statement and all the employees covered by the Green Book are allowed bi- weekly paper payroll statements as per the Green Book. Now several years ago we had the option as we were transferred to electronic statements to opt out for paper payroll statements. Labor relations is working with leave and comp to ensure that these are all followed. That's not something that you have to worry about, but just know that all employees are entitled to their biweekly paper statement if they choose to have that. Section 6 discusses workers compensation and there's no changes in here that you really need to be aware of. This is going to be standard procedure expected for all of us. We need to make available – the CA-550, the CA-1 and the CA-16 to employees and provide reasonable assistance to employees in the completion of these required forms. Additionally when a medical emergency arises we will take appropriate action. No different than how we are already conducting business.

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Section 7 discusses the code of conduct and the employer will periodically direct the attention of all employees to the code of conduct. The code of conduct being referenced here is departmental regulation 4070-735-001 employee responsibilities and conduct. This is same directive that you are having employee signed off as have read on their performance appraisal. This section states that we will direct their attention to it during performance reviews, during formal and informal discussions and during orientation sessions. Quite like we should already be doing we just want to ensure that we are doing it at the specified times.

Section 8 discusses strikes and that no employee has a right to strike against the US government and union agrees to assist the employer to ensure that strikes do not occur. Section 9 briefly discusses the privacy act and that states that all Privacy Act requirements will be met when information is collected from employees.

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That brings us to the conclusion of Article 15. Here we will start to discuss Article 23 covering employee conduct and discipline. There's not a lot of changes in here in regards to the way that we are already doing business. The only changes are that they are now outlined in here. There will be a few spots that we will stop and we really want to highlight as some minor changes that you do need to be aware of. Section 1, discusses disciplinary actions and there are defined as letters of caution, to 14 calendar day suspension or less. So that's typically how we define disciplinary actions. One change here and it will be discussed throughout the next article as well as Article 35, is a change in the retention period for letters of caution. We don't have a specified timeframe for the retention of letters of caution currently, or prior to the Green Book. It was common practice for the letters of caution to remain in the local file for approximately one year. With the Green Book the retention period has been reduced and specified to nine months. So letters of caution need to be removed from the local file after nine months. Those same letters will be retained in your local employee relations office during our retention period of which are seven years from the date of last action. However, it is imperative that you remove it from the file after that nine-month period has passed. Employees do also have the option to attach a rebuttal letter to their letters of caution, that rebuttal letter will remain in the file with the letter of caution for the life of that letter for the nine months.

Any disciplinary action should be taken for such cause as to promote the efficiency of this service. This is a standard burden that we always keep in mind when taking any disciplinary action. Employees have the right to union representation and the union has the right to be present during formal discussions. In regards to this, the right to Weingarten if employees being interviewed and they have reasonable belief that they could be disciplined and they request representation it should be granted.

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We are required to provide an evidence file when any disciplinary action is issued to an employee. The evidence file must contain all the information relied upon by the supervisor in proposing the action. The evidence file will also contain all the information about witnesses that were relied including their identification and their statement. We are already doing this for all letters of reprimand and all suspension proposals. So this standard procedure. There might be a change coming in the future in which we provide this with evidence files also when there's a letter of caution. Article 6, Section 10 of that you previously discussed indicates that we have a contractual obligation to provide a written compliant to employees after any investigation is completed. So that statement leads us to contemplate the issuance of an evidence file with a letter

of caution. To ensure that you're working with your Labor Relations Specialist when any of those types of issues come up.

This article states that discipline must be appropriate to the offense if you're working with your Employee Relations Specialist this is something that is a big part of what they are doing for you. Ensuring that the offense is outlined and the table of penalties is in accordance with case law and is also in accordance with how similar actions have been handled not only in PPQ, but in the Agency as a whole.

This section also states that we should consider extension of response time limits over which we have control. This is not uncommon for management to grant reasonable requests for extensions of time. And this section also said employees will be given reasonable amount of time during their orientation to read and ask questions of the employee responsible at these and conduct directive that department regulation 4070-735 as well as the standards of ethical conduct for employees at the executive branch. This will normally be done during their orientation and within their two weeks of a rival on duty.

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Section 2, discusses the procedures and what's required when we do suspension proposals for 14 days or less. The proposal actually will be issued to the employee and it will contain all the information as to the reason the action is being taken. Employees will have the opportunity to review all of this information. They will have been provided with an evidence file. They have the right to official time to provide an oral and written response. This is one of the changes that is new. That is something we need to just keep in mind. Again, all the employee relation templates have been updated but the employees response period have changed. Previously employees had 10 days to provide an oral response and a written response. Under the Green Book, NAAE employees now have 14 calendar days to provide a written response and 10 calendar days to request oral response. The change here is employees have for additional calendar days to prepare their and submit their written response to any proposed action. Just keep that in mind. It is not a significant change, but it will be outlined in the employee letter. That something you need to keep in mind.

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Section 3, discusses the decision-making factors and disciplinary actions again will be taken for such causes to promote the efficiency of the service. All citing officials are asked to consider all aggregating and mitigating factors which we note as the Douglas Factors. This is a change outlined in the Green Book agreement however it is not a change in how we are currently conducting business. If you've worked with employee relations of the last one year to 18 months, and you have proposed or decided a suspension, you will have been familiar with the Douglas factors. We are requiring all proposing and deciding officials to conduct a Douglas Factor analysis before the proposal of the decision letter is prepared by employee relations. Not a change. If you're not familiar with the Douglas Factors, you can contact your Employee

Relations Specialist to request a copy. Or you can take a look in section three here of Article 23 of the Green Book where those Douglas Factors are outlined.

Section 4 discusses grievance rights. The only issue here that you will want to keep in mind is that the article number has changed so this will be another change that you see in those letters. When there are prepared by employee relations. Previously the article was 10 and now it is 16. Section 5 discusses off-duty misconduct and the requirement that there be a statement of Nexus in the proposal letter. This is very common. It is a requirement by case law that when there's off-duty misconduct we provide a statement indicating the Nexus with their official duties.

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Section 6 discusses service on union. Union will be notified in advance and given the opportunity to be represented at any formal discussions between the employer and the employee regarding disciplinary action or proposed disciplinary action. The mere distribution or dissemination of proposal of decision letter does not constitute a discussion for purposes of this section. If you were having investigative interview or inquiries employee tried to get information about an incident that occurred, that is a formal discussion. However, if you are merely issuing a letter of reprimand or proposal notice or decision notice to an employee there's really no discussion around that, it is just the dissemination and it is not considered a formal discussion.

Section 7 discusses the purging of files. Again, this is the part that's going to be referenced throughout several of these articles. We will discuss in more in-depth in Article 35. However, again, letters of caution and letter of reprimand will be purged from the file and their different retention dates as we previously discussed letters of caution will be removed from the local file after nine months. Letters of reprimand currently have a two year life and those under Green Book have been reduced to 18 months. So a change there. The biggest change with this though is the reference in future personnel actions. Section 7 here states that these types of documents, letters of caution, letters of reprimand, will not be referenced, cited or relied upon in any personal action initiated subsequent to the expiration date. So once the letters of caution and letters of reprimand are removed from the file, we can no longer rely upon them for the purposes of progressive disciplinary action nor can we reference them and any subsequent disciplinary action. So for all intensive purposes once these documents are gone, they are gone and they never existed for the purposes of discipline.

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This begins Article 24 which discusses adverse actions. Much like the last article, a lot of the terms and sections here are the same. But we will go through them and outlined any changes. Section 1 discusses general provisions and defines adverse actions. Adverse actions are as we currently define them a removal, reduction in grade, suspension for more than 14 days, a reduction in pay, and a furlough of 30 days or less for employees serving in bargaining unit positions. Employees have the right to union representation in the union has the right to be represented in any formal discussion if an employee has a reasonable belief that discipline can

result and the request representation. Again, for these adverse actions, that management is required to provide a copy of the evidence file that again contains all the information that was relied upon in taking the action, identifies all of the witnesses and provides witness statements.

Management is again required to consider providing extensions and waiver of time limits under their control if the employee request.

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Section 2 discusses procedures. For adverse actions employees are given 30 days advance written notice from the time of the proposal before decision can be effective. They have that mandatory 30 day period. This is not unlike any other employee in the Agency. The employees to have official time to prepare an oral and written response and again, those time frames have changed a little bit. The employees have now 14 days to provide a written response and 10 days to request and provide an oral response. A decision notice will be provided to an employee and upon providing the decision notice to employee; management must provide a sanitized decision notice to the union. Now that sanitized decision notice will take all identifying information of the employee and witnesses. But that will be provided to the union. Again, grievance procedures, the only change here is the change in article number that you want to be aware of. The union also has the option to move a matter to arbitration under this article.

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Section 3 again discusses decision-making factors. The requirement for deciding officials to consider all aggregating and mitigating factors which we can identify now as the Douglas Factors, again not unlike what we are already doing we already have requirement for proposing and deciding officials to conduct a Douglas Factors analysis. Section 4 discusses off-duty misconduct and again, the requirement of the statement of Nexus between off-duty misconduct and the impact on the employee's official duties.

Section 5 discusses again service on the union and providing advance notification to the union so that they are allowed to be present at a formal discussion between the employer and employee. Again, the delineation between dissemination versus discussion and examination. We are merely providing a decision or proposal notice to the employee, it is not a formal discussion and the union does not need to be present. However if we are having a discussion with the employee and/or having conducting an inquiry or investigation, union does have a right to be present.

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That brings us to the conclusion of Article 24. On the next slide we will discuss Article 25 investigative examination. Article 25 also contains a bigger change. We will get to that at the bottom of this slide, but I just want you to beware. The employer has a right to conduct investigative examination and employees have the right to request union representation during those interviews. Doing so is called Weingarten Rights. When an investigation is conducted by the employer, by management, the employer will inform the employee of the general nature of

the investigation. Here's the big change. Any employee interviewed as a part of an investigation, above the level of the first line supervisor, will be provided with the formal interview notification. That formal interview notification is a sheet of paper and you will have a chance to look at that here in a couple of slides, however that must be provided to employees. If you're a second line supervisor or higher, or an Agency investigator you will be required to provide a copy of this document to an employee prior to initiating the interview or the investigation of the employee. First line supervisors do not have to do this. However any other level of supervision does.

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The employees do have the right to union representation, again Weingarten right – if during the interview they have a reasonable belief that disciplinary action can result they can request union representation. Upon the employee's request for union representation, the investigator or management has three options. Those three options are, one, continue the interview and provide written explanation as to why the employee was not entitled to union representation, two, ensure the employee has union representation to participate in the discussion, that representation can be in person if the union representative is on site. Or it may be by telephone if the union representative is remotely located. Number three, they have the option to reschedule the meeting to allow the union representation to attend.

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Section 2 discusses the employee's role. The employer has the authority to and will inform the employee of the following, that employees must disclose any information known to him or her concerning the matter being investigated, that they have the requirement to answer to the extent of their personal knowledge any questions put to them regarding the matter, that any failure or refusal to answer the questions could result in disciplinary or adverse action, and that any falsely or misleading answer to any question could result in administrative action or criminal prosecution.

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Section 3 again discusses the union's role. When the union representative accompanies the employee to the interview their role can include clarifying questions, clarifying employee's answers, suggesting other employees who may have knowledge of relevant facts, and providing advice to the employee. The union representative will not answer for the employee, disrupt the preceding, or terminate or delay the proceedings. Section 4 record of the interview, no electronic voice recording or and media is allowable. Any written notes taken during the meeting served as the record of the interview.

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Section 5 discusses when the interviews may be conducted. Interviews should be conducted during the employee's duty hours at the employee's work unit, unless extenuating circumstances require otherwise. However, employees will never be forced, absent their consent or court order,

to undergo examination in their home. Any interviews conducted beyond the employee's regular working hours will constitute hours of work and they will be compensated by the employer in accordance with law. Section 6 discusses employees as a primary information source. Prior to interviewing anyone other than the subject of the investigation, the Representative of the employer or management or the investigator will recognize and report with its obligation to obtain all reasonable and necessary information from the employee. And they should be in accordance with the privacy act.

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Section 7 discusses notification of employee's Weingarten Rights. This notification will occur in several different ways. The employer will provide annual notice to all employees of the Weingarten Rights. Employers will ensure that AICB, the Admin Investigation and Compliance Branch investigators are trained on Weingarten Rights. Weingarten will be provided to employees during employee orientation programs, information on Weingarten. They will be provided on the APHIS labor relations webpage and be a part of the labor relations supervisor training curriculum. Section 8 discusses criminal investigations. All criminal investigations will be conducted within applicable laws and employees will be given their rights at the time of the criminal interview or investigation.

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This slide contains a copy of the investigative examination notification. This is the form that must be provided by second line or higher supervisors investigating an employee or conducting an interview. As well as by Agency investigators. I will give you a minute to look at that document.

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That brings us to the conclusion of Article 25. We will go onto the next slide which discusses Article 26. Article 26 discusses probationary employees. This will be a fairly quick article. This article does not contain any changes that we need to be aware of. That are outside of how we are already conducting business. However it is important topic so we will briefly go through this article. Section 1 discusses the probationary period and states that probationary period is not to exceed one year for new employees. It is very important for management to utilize the probationary period. Employees may be terminated during that probationary period but the termination must be effected prior to the completion of one year. Now this probationary period is a very important time for management, I just want to emphasize that point. It is important that when you get a new employee you contact your Employee Relations Specialist to verify that they do have a probationary period and to ensure that you do you have a one-year time frame. Sometimes employees have previously served a portion of their probationary period with another Agency and what do you expect to be one year is sometimes reduced. When you are evaluating your new employee it is important to know exactly how much time you have and to make your decision as to whether their future employment is an option.

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Section 2 discusses employee and supervisory obligations. During this probationary period the employees expected to become familiar with the regulations governing their conduct and performance. And they should demonstrate that are fully successful in that job and they have full qualifications. Questions by the employee can be presented to the employer regarding the conduct or performance and the supervisors should be able to clarify any questions. Upon request of the employee to supervisor will meet with employee to counsel them in areas of improvement. And supervisors have the requirement an obligation to monitor and evaluate the employee's performance and conduct.

In section 3, it discusses termination. When an employee fails to demonstrate an acceptable level of performance or conduct, management has the option during this probationary period to terminate their appointment. If the employee again has failed to demonstrate performance or conduct after the employment on duty, management will provide them with a written notification of termination if they choose not to keep them. That written notification is merely a notice stating your decision at their appointment will be terminated and it will provide specific reasons for that termination.

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On occasion we will have probationary employees who have pre-appointment issues and most typically what we are seeing in this is a falsification on an OF-306 or another employment form. When a probationary termination is occurring for pre-appointment reasons, employees will be provided with a proposal notice, reasonable response period, and a decision notice. Upon receiving the decision notice the employee may request a meeting with the designated management official to discuss their deficiencies and termination action. There's a differentiation between post-appointment reason in which we just provide them with determination notice and issues of pre-appointment conduct or other issues in which the employees provided with written notice response of the decision. Section 4 discusses the appeals of the employees terminated during their probationary period have the right to appeal to the merit systems promotions board. When they appeal to the MSPB they have to articulate that the reason the probationary period was terminated.

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That brings us to the conclusion of this article. On the next slide we will discuss Article 35, personnel record. Section 1 discusses the content a personnel folder and only authorized information should be going into those personnel folders. Here's a change that we've been discussing throughout several of the articles specifically articles 23 and 24. The specific time frames for these letters of reprimand letters of caution and when they will be removed from the file. It is been in the previous article alluding to this and alluding to this and giving us more information about it, but in this article and in this section it specifically states the timeframes. Letter of reprimand will be removed from the file no later than 18 months after their issuance,

and letters of caution or similar will be removed from the file no later than nine months after issuance. So again, copies of these items will be kept in the employee relations office under our timeframe, our timeframes a removal after seven years from the date of last action. So it is not uncommon that we will have files for an extended period of time so if you're worried about discovery for EEO type requests, and you're worried about getting rid of these items, just of the employee relations does retain a copy and you need to ensure that you are in compliance with the Green Book and those items are removed from the file when stated. Again, the biggest change with these that only is the reduction of the retention timeframe. Is the fact that we can no longer rely upon them after they are removed from the file.

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This slide discusses the access to personal records. Employees will be provided access to copies of their OPF, of their evidence file and of their local personnel files. This in some cases may not be what will have to be adhered to, a lot of employees have the option to access their OPF through E-OPF, however in certain cases you probably have employees who do not have access to the E-OPF in those cases you want to ensure that you're very familiar with this section. Upon request by the employee, the access will apply to what I said, all of their files. And they can examine these files in the presence of management or Representative. If we are unable to provide these documents to an employee within the reasonable amount of time, we need to give them notice we are going to extend beyond two weeks from the date of request before we are able to provide the employee with access to these files we need to provide written explanation as to why. When feasible the review the OPF or other personal records will take place at the requesting employee's duty station. And if we did deny the request of an employee for a copy of the personal records we will provide a written explanation including the legal authority upon which we relied to deny such a request. We will agree to not maintain or allow maintaining any material in an employee's OPF that may adversely affect an employee's career unless the effect of employee has been given notice of the adverse material and a copy or an opportunity to copy it before it is placed in the file. It is very unlikely that this type of information will just be sent to an employee's file without them knowing about it and typically these types of things such as letters of reprimand or suspensions, employees will have been provided a copy of it in the opportunity to provide a rebuttal to it. Same with the suspension, they will have an opportunity to provide a written or oral response. A decision will be made and they do you have the option to go through grievance procedures as well.

The employee has the opportunity to include a copy of their rebuttal with any of this adverse material. If they've exhausted their grievance process and arbitration is not invoked, they have not appealed to the MSPB. Under those two circumstances if they've gone through the grievance procedures, not gone to arbitration and they have not appealed to MSPB they can include a rebuttal with this adverse information in the OPF. Any comments or rebuttals must be submitted to the Labor Relations Branch within 45 days of the receipt of the decision. It is the employee's responsibility to make sure they file these and they include their response to the Labor Relations.

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Section 3 discusses protection of personal records. Only authorized personnel should have access to these files. We must maintain them in accordance with the Privacy Act. Section 4 discusses notice of supervisor records. Records, notes and diaries maintained by supervisor with regard to employees are extension or memorization of their memory and may be retained or discarded at the supervisor's discretion. The employer will not use these records, notes, diaries as a basis for disciplinary or adverse action against the employee unless the employee has been shown and provided a copy of the record and has been afforded reasonable opportunity to submit a written response. Employees will be notified by the employer if the employer precedes a series of infractions or other event in their notes or diaries. They will advise the employee of this. And inform the employee of the corrective of action given employee time to correct that behavior before any disciplinary or adverse action is proposed.

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Section 5 discusses local personnel records. Personnel records maintained at the local working will be maintained in a confidential and secure location. As long as they are accessible to employees upon request. Section 6 discusses prohibitive information and records pertaining to an employee's sex, race, color, national origin will not be contained in these files. They must be contained separately. This brings us to the conclusion of Article 35.

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On the next slide we will discuss Article 39, actions based upon unacceptable performance. Section 1 discusses the general provisions and this article specifically discusses topics of reduction in grade and the removal of an employee for unacceptable performance. No employee will be the subject of a performance-based action except for the efficiency of the service. We must prove by substantial evidence the connection between employee's performance and the efficiency of service. No employee will have a performance-based action proposed against them that relies in whole or in part on the position disruption under which you or she is not working. Or on performance expectations that have not been communicated to the employee. Therefore it is very important to ensure that the employees position description are up to date and that you've provided them with a copy of their performance expectations and have those discussions with them because you will not be able to initiate an action if their performance is unacceptable if you have not done those things.

The employee has the option to request or accept an offer from the employer for change to a lower grade due to their unacceptable performance in the absence of a performance improvement plan. If an employee's performance has reached an unacceptable level, and they are aware of a job that they'd like to go to that's available, or you have offered them a job at a lower level that is available, they have the opportunity to go into that job without going through the PIP process.

Prior to initiating an unacceptable performance action, so prior to proposing to remove an employee for poor performance, we have the requirement to initiate a performance improvement

plan or a PIP. The PIP will provide an employee a reasonable period of time to improve their performance to an acceptable level. Currently, our timeframes for PIPs are 60 days. Where sufficient improvement to meet the marginal level or above has not been demonstrated during the PIP it can be extended for a reasonable period of time.

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Section 2 discusses the reduction in grade or removal. If employee's performance has remained unacceptable even after their PIP, management has the option to pursue a reduction in grade or a removal for the employee. They must be given advance notice. They will have 30 days advance notice before a decision is effective, this is just like with any of our other adverse actions. And they will be provided with specific instances outlining their poor performance.

The critical elements in performance standards of the employee's position will also be outlined. Employee will have a reasonable amount of time to review the material relied upon to support the proposed action and begin to prepare an oral or written response. The employee has the right to be represented by the union. The employer will provide a written decision including specific reasons for that decision within a reasonable period of time. Now we do you have specific timeframes that we have to follow with these performance-based actions and so it is important that you are aware of those and that when you realize the employee is becoming unacceptable that you contact your Employee Relations Specialist.

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Section 3 discusses notice to the union. They will be advised of these actions and how of an opportunity to participate in them. Section 4 discusses the procedures. Again, employees will have a reasonable amount of time to prepare an oral and written response. The timeframes for the return response are 14 days. And 10 days to request an oral response.

The employee will have the right to raise any discontent during this response of the proposed action in the deciding official will carefully consider the employee's oral and written replies in rendering their decision. As you'll notice, there's no requirement for the deciding official to consider Douglas Factors, those that was factors are only considered in conduct related acts. That's why you are not seeing that here.

Section 5 against discusses the extension of time and granting reasonable extensions as requested by employee as requested by the employee. So we are to consider extending any timeframes over which we have control.

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Section 6 discusses the Agency's decision and again that decision will be made within a reasonable period of time. And in the case of reduction in grade or removal, the decision will be based only those instances of unacceptable performance by the employee occurring during the one-year period and ending on the date the notice was issued. We have very limited time here.

Section 7 discusses appeal rights. Employees have the right to appeal a removal for performance-based action or reduction in grade for performance-based action to the MSPB. Also have the right to go to grievance procedures. And to union representation.

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That brings us to the conclusion of this article. The next slide we will discuss Article 41 with in grade increases. Again, one thing that I want to highlight as we get into this is that if you notice their employee's performance is becoming unacceptable, you contact your Employee Relations Specialist because their specific timeframes that will need to adhere to. What specifically as we go through article 41, within grade increases you'll hear me talking about these timeframes so it is very important that you are aware of this. When you have an employees who performance is unacceptable and a within grade increase coming do, things get a more complicated and it is even more important that you're aware of this timeframes.

The section one of Article 41 discusses the general provisions. This article is applicable to employees occupying permanent positions within the bargaining unit. Except the level of competence, terminations initially for the purpose of determining whether an otherwise eligible employee is entitled to a within grade increase but within grade increases will be granted to employees who most recent rating of record is passed or for our purposes, fully successful. Absent an official reading of record or notice of the withholding of the within grade increase they will be granted at the appropriate time.

They will be denied if an employee's last reading of record is less than fully successful.

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Section 2 discusses procedure. The acceptable level of confidence determination will be made by the employee's immediate supervisor in a fair and objective manner. The supervisor will use the last reading of record in making the level of confidence decision. If the supervisor decides to withhold the within grade increase, the employee will be given 30 days notice in advance of the within grade due date in which to demonstrate performance at an acceptable level of confidence. This notice will be provided to the issuance of a performance improvement plan. So this is very important right here to ensure that you're keeping an eye on the employee's performance and that you probably address it when it reaches that unsuccessful level. Especially important is when employees within grade increase is due of approximate at the same time because we have to give them 30 days advance notice through a PIP before the due date comes due. Very important to keep an eye on this timeframes and work with your Employee Relations Specialist.

When a within grade increase is to be denied the increase is being withheld as soon as possible. When it is withheld, written notification will be provided to the employee and contain the right to request reconsideration from an appropriate management official. Typically that's second line supervisor. The employee does have the opportunity to go to them upon receiving information that their within grade has been held to request reconsideration. The second line supervisor or

next level management will reconsider and if it is determined that the level of competence is not acceptable level, it will be withheld.

Section 3 discusses the effective date of within grade increases. When employees word is determined to be at an acceptable level of competence, the effective date of the within grade will be the first day of the first pay period following the completion of the waiting period. If an unacceptable level of confidence determination is changed upon reconsideration or appeal, the effective date for the within grade is the date on which it would have been due. When an acceptable level of competence determination is not made on a timely basis, through administrative error, oversight or delay, the determination will be made based upon the employee's performance during the period that would've been covered in determination if it had been made in a timely manner. The effective date for the within grade is the date on which it would have been due. In the situation that it is not made in a timely manner, the employee will be entitled to back pay.

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Section 4 discusses the procedures for withholding the within grade. After withholding the within grade increased the employer will determine at a minimum that employees performance is at the level of confidence after 90 days following the original due date for the within grade. This is another one of those timeframes that you will have to keep in mind as you are going through this process of an employee's performance is unacceptable and they're within grade has been withheld. Our PIP period are 60 day, so a determination could be made at that time or if they are still on the PIP and it is extended, we must make it 90 days after the original date of withholding.

Section 5 discusses appeals. Employees can appeal the withholding of the within grade through the grievance procedures or through the MSPB.

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Section 6 discusses the limitations on use and determinations that employees not performing at an acceptable level of confidence will not be used to dispose of questions of misconduct, not related to job performance. What this is saying is saying is, need to address performances with performance and misconduct with misconduct. Sometimes this gets confusing and a little bit convoluted to make sure you're working with your Employee Relations Specialist to identify those issues that actually performance and those that might be misconduct. Section 7 discusses notice to the union. Again, we must provide written notice to the union regarding the withholding of the within grade. This is one of those items in which two copies must be provided to the employee. One of those copies must state "This copy may at your option be furnished to your NAAE Representative." This is the change that has been made to the templates. It is also something that as the issuing official you will want to keep that in mind. That brings us to the conclusion of Article 41.

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And the conclusion of today's presentation.

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Thank you everyone for joining us and thank you Taryn for the information that you presented. If anybody has any questions about this presentation or anything that's covered in the Green Book, we have contact information for you for APHIS Labor Relations.

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You can contact Pete Brownell or Ron Dale in the Western Region or in the Eastern Region we have Frank King and Robi Maple. There's also a link here for APHIS Labor Relations website and there you can get a copy of the Green Book. If there's any other questions about the recording of this presentation, please contact your PPQ Aglearn administrator. Thank you and this concludes today's presentation.