

STRATEGIC DEFENSE

AGAINST

STAND-BY TIME

A Strategy Book

By

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**NATIONAL BUSINESS AGENTS
AMERICAN POSTAL WORKERS UNION**

Dear Sisters & Brothers:

The enclosed package places together - for the first time – the Collective Bargaining Agreement reference, argument, Arbitrators, evidence and remedies necessary to successfully prosecute USPS misuse and resultant Contract violations when employees are improperly placed on STAND-BY TIME.

Following the recommended course will – we believe – provide your best opportunity to obtain bonafide and substantive remedies for these violations.

It is also our hope that your successful pursuit of the remedies may deter the USPS from future, further violations.

If you have any questions on STAND-BY TIME or need assistance in your investigation or formulation of grievances challenging STAND-BY TIME, contact our office at (856) 740-0115.

Yours in Unionism,

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THE ISSUE – AND THE STRATEGY

USPS use of STAND-BY TIME – and assignment of clerks to that status – when work exists within the installation is in violation of both the M-32 Handbook and Handbook PO-413 under Article 19.

The controlling Article 19 Handbook language states,

Handbook M-32., *Management Operating Data Systems:*

3-4.4.1 Definitions

Stand-by hours are hours recorded for which career bargaining unit employees are guaranteed work hours, as required by applicable national labor agreements, but for which there is insufficient work available. Normally, stand-by time is used for unplanned, low-work-volume periods on a particular day or days, or unplanned events such as equipment or communication breakdowns. Other examples include idle time as a result of storms, power failures, and lack of work.

In addition supportive language exists within the PO-413 Handbook, "Platform Operations":

213 Controlling Nonproductive Time

It is necessary to start now to identify and control all unnecessary and nonproductive workhours. As line supervisors and floor managers, you can accomplish this through two basic actions:

- b. Make full use of MODs Operation 340, Stand-by Time, when you have exhausted the other means of reducing workhours (**liberal leave policy and assignments to available work**).

Again the M-32 states:

3-4.4.6 Stand-By Operation Numbers

The following operations numbers should be used to record stand-by hours:

MODS	
340	Stand-by – Mail Processing
353	Stand-by – Customer Service
354	Stand-by – Delivery Service
Productivity information Management System	
300	Stand-by – Bulk Mail Centers

Often the USPS will place clerks on STAND-BY while at the same time – in the clerk craft:

- working another craft's employee on light duty
- working a TE
- working a PTF
- working a Casual
- using OT during the shift
- work exists/waits to be performed in the facility
- the Clerk is actually working

In all of these scenarios the STAND-BY TIME is in violation of the M-32 due to available work existing. Our argument is that STAND-BY may only be used when there is no work! Management arguments/positions that:

- "we need to save that work for later"
- "we can do that work later"
- "that is not 1st class mail"
- "that is not time sensitive"
- "I will decide what work is performed"
- "I will decide when work is performed"
- "that is not your work"
- "that work is outside your bid"
- "that work is outside your job"
- "that work is outside your section"
- "that work is outside your Principle Assignment Area"
- "that work is outside your level"
- "that work is outside my jurisdiction"
- "that work is outside my supervisory authority"
- "I need to keep this PTF/casual for later work"

are all insufficient to justify placement of clerks off the work room floor and on STAND-BY TIME.

Since the USPS is the author of both the M-32 Handbook and Handbook PO-413 - and the APWU did not participate in the authorship of either Handbook - any ambiguity found in either of the USPS' authored Handbooks is construed against the USPS. Definitive arbitral history supports us in this position:

As Arbitrator Cohen said:

Article 19, Handbooks and Manuals, provides that the Handbooks and Manuals are part of the contract. This means that they are as binding on the parties as if they had been negotiated.

However, Article 19 provides that Handbooks and Manuals will be issued by management, with the

Union only having the right to grieve if it feels that there are grounds for a grievance. The Union does not have the right to participate in the authorship of the Handbooks or Manuals, nor does it have the right in any way to propose its own language for Handbooks or Manuals. It may only grieve what has been proposed by management.

There is a rule of contract construction which provides that when a contract is ambiguous, it is to be construed against the party who wrote it. The rule is generally invoked in construing insurance contracts. It is rarely invoked in construing collective bargaining agreements because the usual collective bargaining agreement is the result of joint effort between the parties.

Because of the way that the contract between the parties here is written, the Handbooks and Manuals are not the joint effort of the parties, but are the sole authorship of the Postal Service. Therefore, following the rule of construction of contract law, any ambiguity in the Handbooks and Manuals would be resolved in favor of the Union.

Arbitrator Gerald Cohen (CAC-4M-D 33178)

Additional Reference:

I find it cannot ... In terms of the rules of contract construction, ambiguities are construed against the drafter of a provision¹. Therefore, giving the Service the benefit of the doubt and assuming that an ambiguity exists through the omission of a documentation requirement in Section 515.2 of the ELM (an assumption that I ultimately do not agree with), that omission must be construed against the Service in favor of the conclusion that given the other provisions of ELM requiring documentation for different kinds of leave requests, had a documentation requirement been intended for paternity leave requests, the drafter of the provision requirement been intended for paternity leaverequests, the drafter of the provision (i.e., the Service) would have included such a requirement.
Arbitrator Edwin H. Benn (C7C-41I-C 31725)

Additional Reference:

Manual provisions such as the ELM are prepared and issued, unilaterally, by the employer. Under Article 19 standards, the union may challenge changes to those regulations in arbitration. In such conditions of rulemaking, inconsistent regulations should be interpreted to the least adverse affect on the party which is the subject of the regulation — employees in this case.
Arbitrator Robert J. Ables (E7T-2E-C 29174/32502)

¹ See John Morrell & Co. 75 LA 1119. 1128 (Bard. 1980):

Historically, ambiguous language in a contract is construed liberally and most strongly in favor of the party who did not write or prepare the language and who is not responsible for the ambiguity... The reason for this “rule of last resort” is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes in meaning than one with whom he is dealing and that he who has brought an agreement into existence and is thus primarily responsible for its accuracy should justly suffer for its shortcomings.

The M-32 clearly does provide for the use of STAND-BY TIME when **"there is insufficient work available."** The handbook goes on to state, **"STAND-BY TIME IS USED FOR UNPLANNED, LOW-WORK-VOLUME PERIODS on a particular day or days ... and lack of work."** Any USPS premeditation and planned/scheduled STAND-BY TIME violates the M-32.

The PO-413 also provides for the use of STAND-BY TIME when you have exhausted the other means of reducing workhours (liberal leave policy and assignments to available work).

Any USPS placement of employees on STAND-BY – without first offering liberal leave (AL/LWOP) and through assignments to other craft work which is available – violates the PO-413.

STAND-BY TIME AND EXCESSING IN ARTICLE 12

As Article 12 excessing becomes more and more widespread, USPS improper invocation of STAND-BY TIME to help justify its involuntary reassignments of clerks will also increase. The more STAND-BY TIME the USPS can create, the more justification they will attempt to promote to support the involuntary reassignment process we call "excessing."

Most USPS managers/supervisors have never read nor are even aware of the Article 19 M-32 or PO-413 STAND-BY TIME requirements.

Any APWU argument challenging USPS use of STAND-BY TIME as being in violation of the Collective Bargaining Agreement must be prosecuted through essential elements of evidence. We must prove that clerk craft employees were, in fact, placed on STAND-BY TIME and that work existed while said clerks were in that status.

We must prove:

1. NAMES OF CLERKS ON STAND-BY TIME
2. DURATION OF STAND-BY TIME
3. NAMES OF EMPLOYEES PERFORMING WORK WHILE CLERKS WERE ON STAND-BY TIME
4. WORK THAT WAS PERFORMED WHILE CLERKS WERE ON STAND-BY TIME
5. WORK THAT EXISTED (NOT BEING PERFORMED) WHILE CLERKS WERE ON STAND-BY TIME

As in all grievances alleging violations of the Collective Bargaining Agreement, if we do not compile the evidence necessary to support our argued violations we will not be successful. The Union bears the burden to prove a clerk was placed on STAND-BY and that work existed which the clerk could have performed during the STAND-BY TIME period.

In addition, increasingly the Union has discovered that clerks are being placed – within the (TACS) timekeeping system – on STAND-BY TIME – ***while they are working!*** This is fraudulent record keeping and falsified input of TACS information.

ELEMENTS OF EVIDENCE

In order to address and challenge these violative practices, the following investigative evidence elements are essential:

INTERVIEWS WITH EMPLOYEES

REQUEST TACS RECORDS

COMPARE STAND-BY TIME TACS RECORDS TO EMPLOYEE'S TESTIMONY

REQUEST MAIL VOLUME REPORTS

REQUEST MAIL COUNTS

REQUEST LEAVE REQUEST DENIALS

REQUEST "LIBERAL" LEAVE SOLICITATION LOG/CANVASS

PEFORM MAIL COUNTS

Should we wait too long to investigate (the longer the worse), we will be unable to reconstruct the facts proving improper or fraudulent use of STAND-BY.

REMEDIES

Clearly stated requested remedies in these cases are critical to our success. Because the violations create a "domino effect" multiple remedies are applicable:

1. Cease and desist improper use of STAND-BY TIME.
2. Immediately change STAND-BY TIME (non-productive work hours) to productive work hours.
3. Pay clerks to be identified by the APWU at the appropriate overtime rate for all hours employees were improperly placed on STAND-BY TIME.
4. Should STAND-BY TIME hours be utilized as part of excessing, the affected employees shall be returned to the losing facility and compensated with travel time pay, out of schedule compensation pay (overtime and administrative, straight time) and mileage due to improper Article 12 inclusion of STAND-BY TIME.

It is important to remember that because each grievance must be filed within 14 days of an occurrence we must grieve within 14 days of a STAND-BY TIME instance to capture a remedy for that particular violation. If we wait and argue "continuing violation" we will be unable to capture the full remedy for each day's STAND-BY TIME violation.

If the employee is moving between floors or between buildings, use the appropriate travel operation number as defined in appendix A of this handbook.

4-4.4 **Stand-by Operations**

Paid hours guaranteed by contractual agreements with the bargaining units that cannot be applied to performance of work must be recorded as nonproductive work hours using stand-by operations.

4-4.4.1 **Definitions**

Stand-by hours are hours recorded for which career bargaining unit employees are guaranteed work hours, as required by applicable national labor agreements, but for which there is insufficient work available. Normally, stand-by time is used for unplanned, low-work-volume periods on a particular day or days, or unplanned events such as equipment or communication breakdowns. Other examples include idle time as a result of storms, power failures, and lack of work. Stand-by hours do not include nonproductive time for temporary equipment breakdowns of 10 minutes or less.

Stand-by operations are listed by operation numbers specifically provided for recording nonproductive hours in section 4-4.4.6.

4-4.4.2 **Applicability to Facilities**

This policy applies to bargaining unit work hours in Function 1 processing facilities, such as PDCs/PDFs, L&DCs, bulk mail centers (BMC), and air mail centers or facilities; in Function 2 installations, such as Post Offices, stations, and delivery distribution units (DDU); and in Function 4 retail units and central forwarding units.

Generally, remote encoding centers (REC) must use staffing flexibilities provided by their transition employee workforce to adjust to workload fluctuations. However, equipment and communication failures that are expected to be overcome, but meet the definition of nonproductive time above, are appropriate conditions for stand-by operations at RECs.

4-4.4.3 **Responsibility**

The Vice President of Network Operations provides the policy direction and the reporting systems and operation numbers for recording all types of work hours, including those for stand-by operations.

Field site managers and supervisors have responsibility for directing and ensuring the accurate recording of nonproductive hours.

4-4.4.4 **Use of Stand-by Operations**

Recording stand-by time is encouraged, when necessary, to accurately account for employee paid hours that cannot be used for productive work activity. Accurate recording produces a true picture of workload and productivity and is preferred over the concept of “keep employees busy” during short periods of no work in a day or portion of the day.

Stand-by operations are intended for short-term use in response to situations that are not likely to continue.

Field managers must monitor stand-by time use on an ongoing basis to ensure that staffing and scheduling match workload requirements, and must make adjustments as necessary to minimize nonproductive time.

Regular use of stand-by time for groups of employees or at regular time periods, or frequent use of Article 7.2.C provisions in national agreements, indicates a need for staffing adjustments. In those situations, stand-by operations should be used as necessary while complying with contract notice periods related to employee schedule, category, or excessing changes.

4-4.4.5 Employees on Stand-by Operations

Employees who are directed to clock onto stand-by operations are “on the clock” and subject to the same direction, supervision, and work rules as when assigned to productive operations. Employees on stand-by should remain in the work facility in an area removed from normal work activity, such as in a break or meeting room, cafeteria, or an area designated for stand-by use. Employees must remain ready to assume normal work activities as needed and directed by supervisors.

4-4.4.6 Stand-by Operation Numbers

The operation numbers listed in Table 4-4.4.6 should be used to record stand-by hours.

Table 4-4.4.6

Operation Numbers for Stand-by Hours

OPN	Description
340	Stand-by — Mail processing/BMCs
353	Stand-by — Customer services
354	Stand-by — Delivery services
614	Stand-by — Postal vehicle service (PVS) operations

4-4.5 MODS Overtime

MODS overtime hours are included in work hours and are reported separately for informational purposes. MODS does not distinguish between the following:

- a. Regular overtime from penalty overtime.
- b. Out-of-schedule premium.
- c. Supervisory extra straight time hours authorized.

Penalty overtime, out-of-schedule premium, and a non-bargaining unit supervisor’s over-40 hours are reported as overtime in MODS.

MODS overtime hours should be reconciled with paid overtime hours (National Work Hours Reporting System) within a tolerance of 5.0 percent per pay period.

Chapter 2

Managing Platform Operations

210 Management Awareness

211 Assessing Potential Savings

Indirect operations that have Labor Distribution Code (LDC) 14, such as platform activities, opening units, and mail preparation, account for approximately 56 percent of total mail processing workhours. The number of workhours in LDC 14 is increasing at a significantly greater rate than are distribution workhours. This growth rate indicates that significant potential savings are available in these areas. Several regional and national programs, such as the Work Credit System, have been initiated to help plan, measure, and control these operations. The best way to ensure that these workhours are productively spent, however, is for line supervisors to make sure that they understand the operation and have managerial control over the workload, personnel, and equipment needed for a well-run operation. This handbook will help supervisors to operate efficiently and safely by providing reminders and asking basic questions about the operations. "Self-audits" highlight the areas where improvements can readily be made. These areas include safety, work methods, control of mail and workhours, and equipment efficiency.

212 Measuring Productivity

The concept of measuring productivity on the platform is still somewhat foreign. Historically we have not measured the workload and therefore have not developed a system to measure platform productivity (workload/workhours). With the installation of the Work Credit System in all MOD 1 offices, we now have a means of measuring performance in the major indirect operations. By measuring productivity, establishing goals, and tracking performance trends, we can reduce workhours and capture the potential savings identified by the new system.

213 Controlling Nonproductive Time

It is necessary to start now to identify and control all unnecessary and nonproductive workhours. As line supervisors and floor managers, you can accomplish this through two basic actions:

- a. Do not allow employees from another operation to be charged to your operation if you do not need them.
- b. Make full use of MODs Operation 340, Stand-by Time, when you have exhausted the other means of reducing workhours (liberal leave policy and assignments to available work).

Note: These actions will provide you and your operation with the ability to increase productivity and to identify unnecessary workhours. In the past, the belief has been that the use of Stand-by Time indicates poor management, but this is not true. Like using overtime when the workload exceeds the normal staffing level, using Stand-by Time is an effective way of compensating for days with a lower than normal workload. Stand-by Time, when used correctly, is a valuable management tool. However, monitor the use of these hours regularly to track any trends.

220 Management Action

221 General

Management of indirect operations is not as structured as is the management of direct operations, such as using letter sorting machines (LSMs), optical character readers (OCRs), and bar code readers. Management of well-functioning platform operations, however, typically is highly structured.

222 Operating Plan

222.1 General. A well-structured platform operation must include a formal operating plan. This plan is the basis for the direction of platform operations at your facility. To develop this platform operating plan, you must consider the critical entry and dispatch requirements for the