



## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

### Appeal to Arbitration, National Dispute

Greg Bell, Director  
Industrial Relations  
1300 L Street, NW  
Washington, DC 20005  
202-842-4273 (Office)  
202-331-0992 (Fax)

August 13, 2009

### Via Facsimile & First Class Mail

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Coordinator, Western Region

Mr. Doug Tulino  
Vice President, Labor Relations  
U.S. Postal Service, Room 9014  
475 L'Enfant Plaza  
Washington, D.C. 20260

Re: USPS Dispute No. Q06C4QC08058827, APWU No. HQTG200716

Dear Mr. Tulino:

Please be advised that pursuant to Article 15, Sections 2 and 4, of the Collective Bargaining Agreement, the APWU is appealing the above referenced dispute to arbitration.

Consistent with the Memorandum of Understanding (MOU) dated June 3, 2004 and the post-1998 provisions of Article 15, the APWU initiated the above-referenced interpretive dispute, and subsequently appealed it to national level arbitration. Accordingly, the parties agree that this case is placed back on the national arbitration docket using the original appeal date of March 25, 1997.

Sincerely,

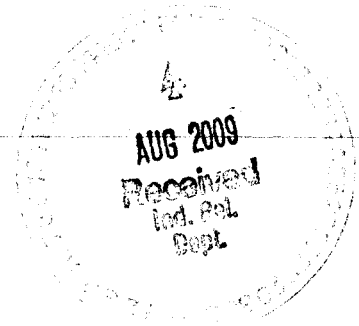
  
Greg Bell, Director  
Industrial Relations

USPS #: Q06C4QC08058827  
APWU #: HQTG200716

Case Officer: Greg Bell  
Step 4 Appeal Date: 12/20/2007  
Contract Article(s): ;

cc: Resident Officers  
Industrial Relations

GB/bw



August 13, 2009

Mr. Greg Bell  
Director, Industrial Relations  
American Postal Workers Union  
(APWU), AFL-CIO  
1300 L Street, NW  
Washington, DC 20005-4128

Fax: (202) 371-0992

Certified Mail Tracking Number:  
7099 3400 0009 0836 7328

Re: Q06C-4Q-C 08058827 / HQTG200716  
Washington, DC 20260-4100

Dear Greg:

On numerous occasions, we met to discuss the above-captioned case at the fourth step of our grievance/arbitration procedures. In accordance with Articles 15.2.Step4.a and 15.4.D, this constitutes the Postal Service's understanding of the issues involved and our response to those issues.

**The interpretative issue presented is:**

Whether an employee who is placed on administrative leave is entitled to Sunday Premium pay for hours s/he would have otherwise worked on Sunday.

**Background:**

By letter dated December 20, 2007, the APWU initiated the instant dispute, citing local grievance number B94T-1B-C 97023586 which had been appealed to national level arbitration on April 1, 1997, under the pre-1998 Article 15 grievance/arbitration procedures. As a result of the June 3, 2004, MOU Re: Review of Pre-1998 Grievances Referred or Appealed to the National Level, this grievance was remanded back to the local parties at Step 3 on September 30, 2004. On September 9, 2005, the local grievance was withdrawn.

**Relevant Handbook and Contract Provisions:**

Article 8.6:

*Each employee whose regular work schedule includes a period of service, any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday, shall be paid extra compensation at the rate of 25% of the employee's base hourly rate of compensation for each hour of work performed during that period of service.*

ELM 434.33:

*If an employee is on leave for any part of the tour, he or she is not entitled to Sunday premium for the leave hours. The exception is that Sunday premium will be continued while an eligible employee is in COP, or is on military, or court leave.*

ELM 519.1:

*Administrative leave is absence from duty authorized by appropriate postal officials without charge to annual or sick leave and without loss of pay.*

**Position of the Parties:**

The APWU asserts that an employee who is placed on administrative leave is entitled to be paid Sunday premium pay for all hours the employee would have otherwise worked during a scheduled tour that includes any part of Sunday. During our discussions, the APWU pointed to the definition of Administrative Leave found at ELM Section 519.1, which clearly states in part: "...without charge to annual or sick leave and without loss of pay." In further support of its position, the APWU identified the national-level Parkinson award<sup>1</sup> regarding the payment of administrative leave and entitlement to night differential pay. Arbitrator Parkinson held, "employees placed on administrative leave shall be paid night differential if they would have otherwise been eligible/entitled to such differential had they not been placed on administrative leave."

It is the Postal Service's position that an employee placed on administrative leave is not entitled to Sunday premium pay. The Postal Service's position is supported by the plain reading of ELM Section 434.33, which clearly states that an employee on leave is not entitled to Sunday premium for **leave hours**. (Emphasis Added) There is no question that administrative leave is a leave category which is not an excepted leave category like continuation of pay (COP), military, or court leave. The Postal Service notes that ELM Section 434.33, that is, "if on leave for any part of the tour, the employee is not entitled to Sunday premium for the leave hours," has been in existence since at least the issuance of ELM 1, dated April 1, 1978, and continues to the present version, ELM 19.2 dated May 2009. The exclusion of Sunday premium pay when an employee has been placed on administrative leave has been and continues to be the Postal Service's policy. This fact coupled with the 30+ years of application demonstrates the Service's intent and constitutes a binding past practice.

Moreover, in the Postal Service's view, the Union's reading of ELM Section 519.1 is too narrow. For sure, the definition of administrative leave states "without loss of pay" and is the general policy. However, this general policy must be read in concert with ELM 434.33 which provides further clarification on when the payment of Sunday premium is appropriate.

Furthermore, to allow Sunday premium payment when an employee is placed on administrative leave is inapposite to the clear and unambiguous provisions of ELM Section 434.33. As stated above, this is not new language. However, if the APWU was dissatisfied

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<sup>1</sup> J90M-1J-C 95047374 dated December 8, 2000.

with the provision, it could have and should have challenged it, long ago, under Article 19 of the National Agreement. Of course, it is too late in the day to challenge this provision now.

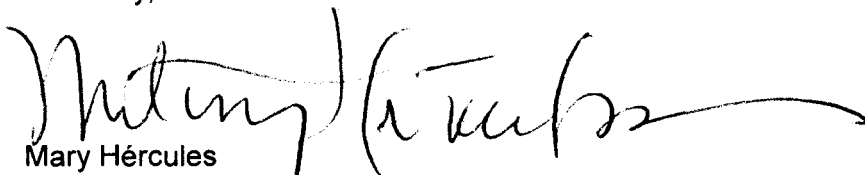
The Postal Service also distinguishes the policy on the application of night differential with the one for Sunday premium. The glaring distinction is that the policy on night differential did not and does not have the same exclusionary provision contained in the policy on Sunday premium pay. (See ELM 434.33). In the Service's view, this distinction is sufficient to overcome the Union's reliance on the Parkinson award.

In addition, negotiations history, case law, handbooks, and manuals, and a reading of the National Agreement support management's position.

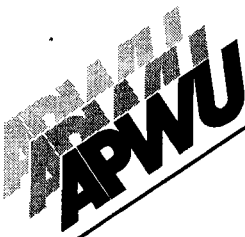
Based on the foregoing, it is the Postal Service's position that employees who are placed on administrative leave are not entitled to Sunday premium pay for hours the employee would have otherwise worked on Sunday.

Time limits for exchanging Step 4, 15-day position statements were extended to August 13, by mutual consent.

Sincerely,



Mary Hércules  
Labor Relations Specialist  
Contract Administration (APWU)



## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Greg Bell, Director  
Industrial Relations  
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Omar M. Gonzalez  
Western Region Coordinator

## Article 15 - 15 Day Statement of Issues and Facts

### Via Facsimile & First Class Mail

August 13, 2009

Ms. Mary Hercules  
Labor Relations Specialist  
U.S. Postal Service  
475 L'Enfant Plaza, SW  
Washington, D.C. 20260

Re: APWU No. HQTG200716, USPS #Q06C4QC08058827

Dear Ms. Hercules:

On July 28, 2009, we met to discuss the above-referenced dispute at Step 4 of the grievance procedure. The parties mutually agreed to submit their written statements no later than August 13, 2009. The following represents the APWU's understanding of the issues to be decided, and the facts giving rise to the interpretive dispute.

### Issue:

Whether an employee who is on administrative leave is entitled to Sunday Premium pay for hours he/she would have otherwise worked on Sunday.

### Background

On March 25, 1997, Case #B94T1BC97023586 was appealed to national-level arbitration from a Step 4 appeal under the pre-1998 Article 15 procedures. In accordance with the June 3, 2004 Memorandum of Understanding "Re: Review of Pre-1998 Grievances Referred or Appealed to the National Level," all grievances appealed under the pre-1998 Article 15 process that had not been settled, withdrawn or remanded pending the outcome of a national dispute were considered remanded, as of Sept. 30, 2004, to the parties at Step 3 for further processing or to be scheduled for arbitration, as appropriate.

Consistent with the Memorandum of Understanding (MOU) dated June 3, 2004 and the post-1998 provisions of Article 15, the APWU initiated the above-referenced interpretive dispute, and subsequently appealed it to national level arbitration. Accordingly, the parties agree that this case is placed back on the

national arbitration docket using the original appeal date of March 25, 1997.

It is the APWU position that an employee on administrative leave is entitled to be paid Sunday premium pay for all hours he/she would otherwise have worked during a scheduled tour that includes any part of Sunday. The Postal Service action to the contrary violates Article 5, 8, 10, and 19 of the National Agreement, but not limited to, and applicable provisions of the handbooks/manuals, the parties' mutual understanding, and previous national-level settlements and national-level awards. The Postal Service disagrees.

For example, Article 10, Section 2 of the National Agreement incorporates the leave regulations in Subchapter 510 of the Employee and Labor Relations Manual (ELM). Part 519.1 of the ELM provides the following:

*Administrative leave is absence from duty authorized by appropriate postal officials without charge to annual or sick leave and without loss of pay.*

Consistent with applicable provisions of the collective bargaining agreement, the contract permits postal officials to place an employee off-duty on administrative leave in a variety of circumstances. However, the clear and unambiguous provisions of the ELM protect employees against suffering a loss of pay while on such administrative leave. An employee on administrative leave is entitled to be paid Sunday premium pay for all hours he/she would otherwise have worked during a scheduled tour that includes any part of Sunday. A contrary result would mean that employees would suffer a loss in pay simply because a postal official placed them on administrative leave, which is clearly contrary to, and in conflict with, Section 519.1 of the ELM.

Moreover, the Postal Service has memorialized its mutual understanding and agreement that administrative leave, as a leave specifically defined as "without loss of pay" means without the loss of Sunday premium or similar types of pay. For example, in a 1985 national-level settlement between the Postal Service and the National Postal Mail Handlers Union (NPMHU), the parties specifically agreed to the following:

Part 519.1 of the ELM defines administrative leave as . . . "absence from duty authorized by appropriate postal officials . . . without loss of pay." Therefore, those employees who would have normally received Sunday premium on the day in question will be appropriately compensated at the rate of pay in effect at the time of the incident.

In addition, the issue in this dispute concerning the meaning of "without loss of pay" provisions in Part 519.1 of the ELM was sustained in favor of the unions in December 2000, in

national-level case #J90M1JC950547374, by Arbitrator Philip Parkinson. Arbitrator Parkinson indicated that the issue in the case before him is whether an employee placed on administrative leave is entitled to receive night differential that he or she would have otherwise received had he/she been on duty. After considering the arguments and evidence<sup>1</sup> of the parties, he agreed with the unions' position.

"It is my opinion that the intent of Section 519.1 of the ELM is clear in this regard, i.e., that an employee should be paid whatever the rate of pay he would have otherwise been paid had the employee not been placed on administrative leave," Parkinson reasoned. "To read anything other than this into this clause is to preclude an employee the rate of pay he would normally be paid on his regular tour of duty and would mean that the clear and concise language of this clause would be disregarded," according to Arbitrator Parkinson. "It would, in effect, also mean that when an employee is placed on administrative leave and in the event his tour of duty falls or fell within the designated night differential window of hours, then he would be on administrative leave with loss of pay," Arbitrator Parkinson stressed.

Sincerely,

  
Greg Bell, Director  
Industrial Relations

APWU #: HQTG200716  
USPS #: Q06C4QC08058827

Dispute Date: 12/20/2007  
Contract Articles: 5,8,10 and 19

cc: Industrial Relations File

GB /bw  
opeiu#2  
afl-cio

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<sup>1</sup> The arguments and evidence presented in the Parkinson case are relevant and on point in this case.



## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

### Initiate National Dispute

#### VIA FACSIMILE AND REGULAR MAIL

Greg Bell, Director  
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(202) 842-4273 (Office)  
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Omar M. Gonzalez  
Western Region Coordinator

Mr. Doug Tulino  
Vice President, Labor Relations  
U.S. Postal Service, Room 9014  
475 L'Enfant Plaza  
Washington, D.C. 20260

Re: APWU No. HQTG200716, Cert No. 70032260000549124106

Dear Mr. Tulino:

On March 25, 1997, case # B94T-1B-C97023586 was appealed to national arbitration from a Step 4 appeal under the pre-1998 Article 15 procedures. In accordance with the June 3, 2004 Memorandum of Understanding "Re: Review of Pre-1998 Grievances Referred or Appealed to the National Level," all grievances appealed under the pre-1998 Article 15 process that had not been settled, withdrawn or remanded pending the outcome of a national dispute were considered remanded as of Sept. 30, 2004 to the parties at Step 3 for further processing or to be scheduled for arbitration, as appropriate.

Please be advised, the APWU has made an interpretive review of the issue(s) in this case, and in accordance with the provisions of Article 15 of the collective bargaining agreement, and of the June 3, 2004 Memorandum of Understanding, the American Postal Workers Union is initiating a dispute at Step 4 of the grievance procedure concerning the following interpretive issue:

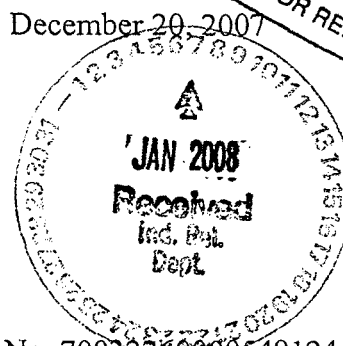
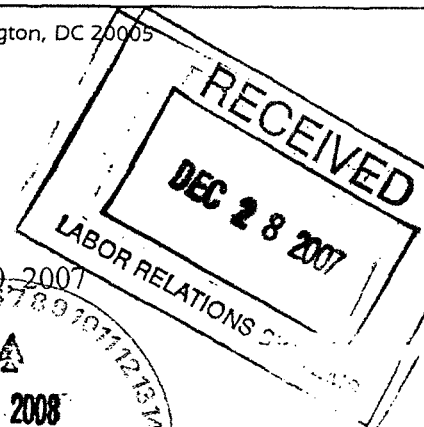
Whether an employee who is on administrative leave is entitled to Sunday Premium pay for hours he/she would have otherwise worked on Sunday.

It is the APWU position that an employee on administrative leave is entitled to be paid Sunday premium pay for all hours he/she would

#### Step 4 - Direct Appeal

K. Rachel  
A. Moore  
J. Dockins  
M. Hercules (with case file)

Copy to : Union, Binder





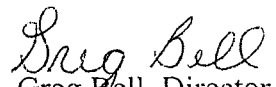
Page 2  
Mr. Tulino, 122007  
HQTG200716

otherwise have worked during a scheduled tour that includes any part of Sunday.

In accordance with the provisions of Article 15, Section 2, of the National Agreement, "[T]he parties shall meet at the National level promptly, but in no event later than thirty (30) days after initiating such dispute in an effort to define the precise issues involved, develop all necessary facts and reach agreement." If the parties are unable to resolve this issue, it will be placed back on the arbitration docket based on the original appeal date of March 25, 1997, in accordance with the June 3, 2004 Memorandum.

Please contact me to discuss this dispute at a mutually scheduled time.

Sincerely,

  
Greg Bell, Director  
Industrial Relations

APWU #: HQTG200716

Dispute Date: 12/20/2007

Case Officer: Greg Bell

Contract Article(s): Art. 10; Art. 8

cc: File

GB/BW