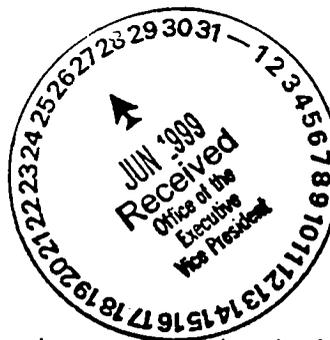




June 22, 1999

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128



Dear Bill:

This is in response to your June 7 correspondence concerning the May 28 notice of changes to the Employee and Labor Relations Manual (ELM) Subchapter 510 Leave, section 514.22 and 514.22c.

After a meeting held on June 19 to discuss those changes, revisions were made that we believe address your concerns. Enclosed is a copy of the language that will be included in the next publication of Issue 14 of the ELM.

Should you have any questions or concerns, please call Corine Rodriguez of my staff at (202) 268-3823.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles E. Baker".

Charles E. Baker
Acting Manager
Labor Relations Policies and Programs

Enclosure

the employee received salary or leave payments from another federal agency.

513.83 Separation by Death

If an ill employee dies without returning to duty and without making application for sick leave, the postal official who is in charge of the installation grants sick leave for the period of illness or disability immediately prior to death. If the employee was in pay status on the day of death or immediately prior to death, the employee's beneficiary is entitled to receive compensation without charge to leave for the date of death. The latter applies whether or not employees have leave to their credit.

513.9 Collection for Unearned Sick Leave

Collection for used but unearned sick leave at the time of separation is made in the same manner as for unearned annual leave (See 512.72).

514 Leave Without Pay (LWOP)

514.1 Definitions

The following definitions apply for the purposes of the section:

- a. LWOP is an authorized absence from duty in a nonpay status.
- b. LWOP may be granted upon the employee's request and covers only those hours which the employee would normally work or for which the employee would normally be paid.
- c. LWOP is different from AWOL (absent without leave), which is a nonpay status due to a determination that no kind of leave can be granted either because (1) the employee did not obtain advance authorization or (2) the employee's request for leave was denied.

514.2 Policy

514.21 Restriction

LWOP in excess of 2 years is not approved unless specifically provided for in postal policy or regulations.

514.22 Administrative Discretion

Each request for LWOP is examined closely and a decision is made based on the needs of the employee, the needs of the USPS, Postal Service, and the cost to the USPS, Postal Service. The granting of LWOP is a matter of administrative discretion. ~~It~~ discretion and is not granted on the employee's demand except that: as provided in collective bargaining agreements or as follows:

- a. A disabled veteran is entitled to LWOP, if necessary, for medical treatment.
- b. A Reservist or a National Guardsman is entitled to LWOP, if necessary, to perform military training duties under the Vietnam Era Veterans' Readjustment Act of 1974. (See 38 U.S.C., section 2024.)

- c. An employee who requests and is entitled to time off under 515, Absences for Family Care or Serious Health Problem of Employee, must be allowed up to a total of 12 workweeks of absence within a Postal Service leave year for one or more reasons listed in 515.41. ~~Leave without pay may be taken in combination with annual or sick leave for which the employee is qualified.~~

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Re: Case No. Q90C-4Q-C 95048663
Washington, DC - Headquarters

Recently, you met with Postal Service representatives to discuss the above-captioned grievance, currently pending national level arbitration.

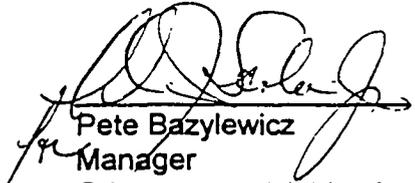
This grievance concerns the effect of the Memorandum of Understanding (MOU) concerning "Paid Leave and LWOP" found on page 312 of the 1998 National Agreement.

The parties hereby reaffirm the attached Memorandum of Understanding dated November 13, 1991, which serves as the parties' further agreement on the use of paid leave and LWOP.

We further agree that:

1. As specified in ELM 513.61, if sick leave is approved, but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP at the employee's option.
2. Employees may use LWOP in lieu of sick or annual leave when an employee requests and is entitled to time off under ELM 515, Absences for Family Care or Serious Health Problem of Employee (policies to comply with the Family and Medical Leave Act).
3. In accordance with Article 10, Section 6, when an employee's absence is approved in accordance with normal leave approval procedures, the employee may utilize annual and sick leave in conjunction with leave without pay. As we have previously agreed, this would include an employee who wishes to continue eligibility for health and life insurance benefits, and/or those protections for which the employee may be eligible under Article 6 of the National Agreement.

With the above understandings, which shall apply to currently pending timely grievances and those filed in the future, we agreed to settle this grievance. Please sign below as acknowledgment of your agreement to resolve this grievance, removing it from the pending national arbitration listing.


Pete Bazylewicz
Manager
Grievance and Arbitration


William Burrus
Executive Vice President
American Postal Workers'
Union, AFL-CIO

Date: 4-20-99

Attachment

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

The undersigned parties negotiated a Memorandum of Understanding (MOU) entitled "LWOP in Lieu of SL/AL" that allows an employee to request Leave Without Pay (LWOP) prior to exhausting annual or sick leave. The following serves as a guide for administering these newly negotiated MOU provisions.

The basic intent of this MOU is to establish that an employee need not exhaust annual or sick leave prior to requesting LWOP. One example of the term "need not exhaust" is when an employee requests maternity or paternity leave and was previously required by local management to exhaust their sick or annual leave prior to receiving LWOP. An employee now has the option of requesting LWOP in lieu of sick or annual leave prior to reaching the point where they may exhaust their leave benefits.

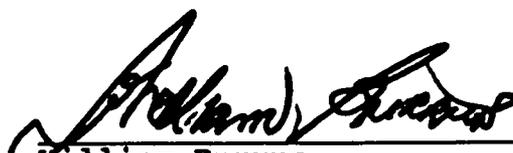
It was not the intent of this MOU to increase leave usage (i.e. approved time off). Moreover, it was not the intent that every or all instances of approved leave be changed to LWOP thus allowing the employee to accumulate a leave balance which would create a "use or lose" situation. Furthermore, the employer is not obligated to approve such leave for the last hour of the employee's scheduled workday prior to and/or the first hour of the employee's scheduled workday after a holiday.

This MOU does not change Local Memoranda of Understanding regarding procedures for prescheduling annual leave for choice or nonchoice vacation periods. It also was not intended to provide employees the opportunity to preschedule LWOP in lieu of annual leave for choice or nonchoice periods. An employee may at a later date request to change the prescheduled annual leave to LWOP, subject to supervisor approval in accordance with normal leave approval procedures. However, this option is available to an employee only if they are at the point of exhausting their annual leave balance.

This MOU does not establish a priority between incidental requests for annual leave or LWOP when several employees are simultaneously requesting such leave. The normal established local practice prevails, i.e., whether leave requests are approved in order of seniority or on a first come first serve

basis or other local procedure. This memorandum of understanding has no effect on any existing leave approval policies or other leave provisions contained in the Employee and Labor Relations Manual or other applicable manuals and handbooks.


William J. Downes
William J. Downes
Director
Office of Contract
Administration
Labor Relations Department
U.S. Postal Service


William Burrus
William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

11 - 13 - 91
Date

for nonretiree veterans, using SF 813, for Retirement, Thrift Savings Plan, and Reduction in Force (RTR) purposes.

. . .

512.5 Leave Charge Information

. . .

512.52 Part-Time Employees

. . .

512.5224 Part-Time Regular

A part-time employee who is granted annual leave and performs service on the same ~~duty day~~ is not allowed to work more hours than would total 8 hours when combined with leave hours.

. . .

514 Leave Without Pay (LWOP)

. . .

514.2 Policy

. . .

514.22 Administrative Discretion

Each request for LWOP is examined closely and a decision is made based on the needs of the employee, the needs of the USPS, and the cost to the USPS. The granting of LWOP is a matter of administrative discretion. It is not granted on the employee's demand except that:

- a. A disabled veteran is entitled to LWOP, if necessary, for medical treatment.
- b. A Reservist or a National Guardsman is entitled to LWOP, if necessary, to perform military training duties under the Vietnam Era Veterans' Readjustment Act of 1974. (See 38 U.S.C., section 2024.)
- c. An employee who requests and is entitled to time off under 515, Absences for Family Care or Serious Health Problem of Employee, must be allowed up to a total of 12 workweeks of absence within a Postal Service leave year for one or more reasons listed in 515.41. Leave without pay may be taken in ~~combination with~~ addition to annual or sick leave for which the employee is qualified in accordance with an approved absence.

. . .

5-24-99 Corrections to Draft Leave Provisions in ELM 510

The following corrections and clarifications have been made to the draft previously provided.

512.223, **Retired Military Personnel** (under determining leave category for military personnel), section c (4) is modified by adding a note to clarify the use of form SF 813.

512.522, **Part-Time Regular** (under leave charge information for part-time employees), is modified to correct a typographical error.

514.22, **Administrative Discretion** (under LWOP policy), section c is modified to conform to a recent change in policy.

519.28, **Special Events** (under events and procedures for granting administrative leave), has the reference to the F-15 modified to indicate it is the appropriate handbook to find the expense reimbursement policies related to attending special events.

The sections affected by revisions appear below.

510 Leave

512. Annual Leave

...

512.2 Determining Annual Leave Category

...

512.223 Retired Military Personnel

...

c. *Verification.* Military service should be verified:

...

- (4) *Campaign/Expeditionary Service.* Verify by sending a completed SF 813, *Verification of a Military Retiree's Service in Nonwartime Campaigns or Expeditions*, to the appropriate military record center. See Exhibit 521.223c for an illustration of SF 8113. This form is not stocked in the material distribution center, it is to be reproduced locally.
Note: Campaign and expeditionary service should also be verified

COLLECTIVE BARGAINING AGREEMENT

Between
**American
Postal Workers
Union, AFL-CIO**
And
U.S. Postal Service

November 21, 1990—
November 20, 1994



APWU

leave balance will be paid in a lump sum.

Appropriate regulations and procedures will be issued and the program will be implemented within 180 days from the signing of this Agreement.

(The preceding Memorandum of Understanding, Leave Sharing, applies to Transitional Employees.)

* * *

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
THE JOINT BARGAINING COMMITTEE
(American Postal Workers Union, AFL-CIO, and
National Association of Letter Carriers, AFL-CIO)

Re: Paid Leave and LWOP

The parties agree that an employee need not exhaust annual leave and/or sick leave before requesting leave without pay. As soon as practicable after the signing of the 1990 National Agreement, Employee and Labor Relations Manual (ELM) Exhibit 514.4(d) will be amended to conform to this Agreement.

The parties further agree that this Memorandum does not affect the administrative discretion set forth in ELM Part 514.22, nor is it intended to encourage any additional leave usage.

Grievance Number H7C-NA-C 61 is withdrawn.

(The preceding Memorandum of Understanding, Paid Leave and LWOP, applies to APWU Transitional Employees.)

* * *



UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100



Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-NA-C 61
W. Burrus
Washington, DC 20005

Dear Mr. Burrus:

On January 30, 1990, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether Article 10.6 of the National Agreement authorizes employees to use leave and LWOP simultaneously for short term absences.

It is our position that no national interpretive issue involving the terms and conditions of the National Agreement is fairly presented in this case. However, inasmuch as the union did not agree, the following represents the decision of the Postal Service on the particular fact circumstances involved.

Article 10.6 was added to the National Agreement as a result of the 1987 negotiations. The addition had two specific purposes:

1. To permit employees on extended absence to stretch available leave over a long period of time to keep medical benefit eligibility and Article 6 protection.
2. To forbid employees from using approved leave in conjunction with LWOP for the purpose of receiving holiday pay.

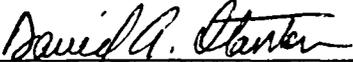
William Burrus

2

Article 10.6 was not intended to apply to short term absences. The JBC's 1987 proposals and minutes from negotiating sessions confirm this position. Consequently, this grievance must be denied.

Time limits at Step 4 were extended by mutual consent.

Sincerely,



David A. Stanton
Grievance & Arbitration
Division

Date _____



UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

MAY 4 1988

Mr. Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: H7C-NA-C 9
M. Biller
Washington, DC 20005

Gentlemen:

On February 9, 1988, David Cybulski and Charles Dudek met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether an employee who is on extended absence and wishes to continue eligibility for health and life insurance benefits, and those protections for which an employee may be eligible under Article 6 of the National Agreement may use sick leave and/or annual leave in conjunction with leave without pay (LWOP) prior to exhausting his/her leave balance.

During our discussions, we mutually agreed that an employee in the above circumstances may use sick leave and/or annual leave in conjunction with LWOP prior to exhausting his/her respective leave balance. In addition, this settlement does not limit management's prerogative to grant leave requests at its discretion according to normal leave approval procedures. Furthermore, the Employer is not obligated to approve such leave for the last hour of the employee's scheduled workday prior to and/or the first hour of the employee's scheduled workday after a holiday.

- 2 -

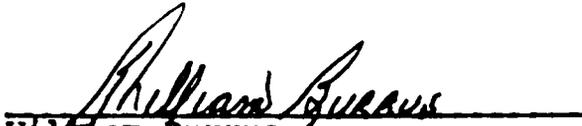
Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,



David P. Cybulski
Acting General Manager
Grievance & Arbitration
Division



William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO



Lawrence G. Hutchins
Vice President
National Association of Letter
Carriers, AFL-CIO

5/4/88
DATED

Forward Header

Subject: Possible settlement of "LWOP approval" arbitration case
Author: THOMAS G. SKOLAK at ININ001L
Date: 4/15/99 10:14 AM

as scary as it gets

Forward Header

Subject: Possible settlement of "LWOP approval" arbitration case
Author: DALE P BIERSTFKRP at BLIL002L
Date: 4/14/99 8:32 PM

The following may affect how some of you handle LWOP approvals. Let us know if we need to object.

Forward Header

Subject: Possible settlement of "LWOP approval" arbitration case
Author: WALTER F O'TORMEY at WADC035L
Date: 4/14/99 5:02 PM

Ladies & gentlemen,
Comments or concerns?
Walt

Forward Header

Subject: Possible settlement of "LWOP approval" arbitration case
Author: PATRICIA A HEATH at WADC041L
Date: 4/12/99 3:34 PM

This is to let you know about a possible settlement of an arbitration case scheduled for next Wednesday, April 21 with the APWU in front of Arbitrator Das.

The APWU challenges our ability to require employees to take paid leave instead of leave without pay. The issue as framed by the APWU in the grievance papers is:

... contesting the employer's interpretation of employees' right to

use LWOP in conjunction with annual or sick leave if the leave is approved pursuant to normal leave approval procedures. Supervisors have the authority to approve "leave" for employees' absences, but the parties have negotiated that an employee's decision to use LWOP in combination with sick or annual "leave" is at the employee's discretion if the "leave" [absence] is otherwise approved.

[The USPS] letter includes that the "granting of LWOP is a matter of administrative discretion". In this context, it appears that supervisors may approve the "leave" but deny the use of LWOP. This interpretation is contrary to the parties agreement that provides that "employees may utilize annual and sick leave in conjunction with leave without pay." Supervisory discretion is the approval or disapproval of the leave and not the specific type of leave.

Based on our discussions this morning, WE PLAN TO SETTLE THE CASE. Jim Shipman, who negotiated the Paid Leave and LWOP MOU in 1990 (now on page 312 of the APWU 1998 Agreement), agrees with the above statements. If we decide to approve the absence, we cannot disapprove LWOP. Nor can we indicate that we will approve SL but not LWOP. To that extent, it appears this case should be settled and we plan to open discussions with the APWU. ~~We thought you might be interested and wanted to let you know of the possibility now in case you wished to provide input, prior to my contacting the APWU tomorrow.~~

We believe that annual leave requested under Local Union procedures is an exception, when those procedures apply only to requests for "annual leave." If an office has a 10 person "daily quota" to whom ANNUAL must be granted, an employee cannot request AL as the tenth person and later change to LWOP. Similarly, an employee who selects 15 days of AL for choice vacation, and before the period comes along uses all his AL, would not have an ENTITLEMENT to LWOP instead.

In terms of FMLA, the law indicates that we may require use of paid leave before unpaid leave. However, our contractual agreement to the contrary as noted above would be binding on us, notwithstanding the FMLA provision.

I can be reached at x3813 if you have comments or concerns.

202 842
4297



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

June 13, 1996

William Burrus
Executive Vice President
(202) 842-4246

Dear Tony:

Pursuant to the provisions of Article 15 of the National Agreement this is to initiate a Step 4 grievance protesting the employer's interpretation on the use of LWOP as expressed in your letter of June 10, 1996. The union interprets the provisions of the National Agreement and interpretations by the Department of Labor as limiting the right of the employer to require employees to use leave that has not been earned prior to granting LWOP. By opinion letter released May 12, 1995, Daniel Sweeney, Deputy Assistant Administrator of the Wage and Hour Division provided an interpretation on this provision "to mean that the employee has both earned the leave and is able to use that leave during the FMLA leave period". The USPS policy as expressed in your June 10, 1996 letter is in conflict with this DOL interpretation.

National Executive Board

Moe Biller
President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

Greg Bell
Industrial Relations Director

Robert L. Tunstall
Director, Clerk Division

James W. Lingberg
Director, Maintenance Division

Robert C. Pritchard
Director, MVS Division

George N. McKeithen
Director, SDM Division

Regional Coordinators

Leo F. Persails
Central Region

Jim Burke
Eastern Region

Elizabeth "Liz" Powell
Northeast Region

Terry Stapleton
Southern Region

Raydell R. Moore
Western Region

Your argument that the right of employees to voluntarily use unearned leave somehow balances the employer's improper requirement is specious and not worthy of further comment. As you are clearly aware, the parties have incorporated this right into handbooks and manuals and have a long standing mutually recognized past practice that employees may voluntarily use unearned annual leave.

As a remedy to this violation, the union request that all unearned leave improperly applied to employee FMLA absences be restored and the employer waive collection of payment because of this illegal policy of which the employer had advance knowledge.

Thank you for your attention to this matter.

Sincerely,

William Burrus
William Burrus

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

June 13, 1996

Dear Tony:

Pursuant to the provisions of Article 15 of the National Agreement this is to initiate a Step 4 grievance contesting the employers right to require the use of annual leave under the Dependent Care Memorandum. As expressed in my letter of May 22, 1996, provisions of the ELM, Section 513.61 expressly provides that "if sick leave is approved, but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP *at the employee's option*". This is in direct conflict with your response as contained in your June 10, 1996 letter. The option to use LWOP in the above circumstances is at the employee's option.

As a remedy to violations of these provisions, I request that such improperly applied leave be restored to employee balances and any collection of monies paid be waived because of the employer's advance knowledge that the policy was in violation of the rules.

Sincerely,


William Burrus
Executive Vice President

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

National Executive Board

Moe Biller
President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

Greg Bell
Industrial Relations Director

Robert L. Tunstall
Director, Clerk Division

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Director, Maintenance Division

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Leo F. Persails
Central Region

Jim Burke
Eastern Region

Elizabeth "Liz" Powell
Northeast Region

Terry Stapleton
Southern Region

Raydell R. Moore
Western Region

paid leave of any kind. (Sick leave is not intended to be used to supplement earnings of employees.)

513.422 Minimum Unit Charge

Employee Category	Minimum Unit Charge
All part-time nonexempt employees.	Hundredth of an hour (.01 hour).
Part-time exempt employees.	(See 519.71.)

513.5 Advance Sick Leave

513.51 Policy.

513.511 May Not Exceed 30 Days. Sick leave not to exceed 30 days (240 hours) may be advanced in cases of serious disability or ailments if there is reason to believe the employee will return to duty. Sick leave may be advanced whether or not employees have annual leave to their credit.

513.512 Medical Document Required. Every application for advance sick leave must be supported by medical documentation of the illness.

513.52 Administration.

513.521 Installation Heads' Approval. Officials in charge of installations are authorized to approve these advances without reference to higher authority.

513.522 Forms Forwarded. Form 1221, *Advance Sick Leave Authorization*, is completed and forwarded to the PDC when advance sick leave is authorized.

513.53 Additional Sick Leave.

513.531 30 Day Maximum. Additional sick leave may be advanced even though liquidation of a previous advance has not been completed, provided the advance at no time exceeds 30 days. Any advance sick leave authorized is in addition to the sick leave which has been earned by the employee at the time the advance is authorized.

513.532 Liquidating Advance Sick Leave. The liquidation of advance sick leave is not to be confused with the substitution of annual leave for sick leave to avoid forfeiture of the annual leave. Advanced sick leave may be liquidated in the following manner:

a. Charging the sick leave against the sick leave earned by the employee as it is earned upon return to duty.

b. Charging the sick leave against an equivalent amount of annual leave, at the employee's request if the annual leave charge is made prior to the time such leave is forfeited because of the leave limitation regulation.

513.6 Leave Charge Adjustments

513.61 Insufficient Sick Leave. If sick leave is approved, but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP at the employee's option.

513.62 Insufficient Sick and Annual Leave. If sick leave is approved for employees who have no annual or sick leave to their credit, the absence may be charged as LWOP unless sick leave is advanced as outlined in 513.5. LWOP so charged cannot thereafter be converted to sick or annual leave.

513.63 Disapproved Sick Leave. If sick leave is disapproved, but the absence is nevertheless warranted, the supervisor may approve, at the employee's option, a charge to annual leave or a charge to LWOP.

513.64 Absence Without Leave. An absence which is disapproved is charged as LWOP and may be administratively considered as AWOL.

513.65 Annual Leave Changed to Sick Leave. If an employee becomes ill while on annual leave and the employee has a sick leave balance, the absence may be charged to sick leave.

513.7 Transfer or Reemployment

513.71 Transfer.

513.711 Crediting. Individuals who are transferring from a federal agency to the USPS are credited with their sick leave balance provided there is not a break in service in excess of 3 years.

513.712 Recrediting

a. If a USPS employee transfers to a position under a different leave system, to which only a part of the employee's sick leave can be transferred, the sick leave is recredited if the individual returns to the USPS provided there is not a break in service in excess of 3 years.

b. If a USPS employee transfers to a position to which sick leave cannot be transferred, the sick leave is recredited if the individual returns to the Postal Service provided there is not a break in service in excess of 3 years.

513.72 Reemployment. Sick leave may be recredited upon reemployment provided there is not a break in service in excess of 3 years.

513.73 Reemployment--OWCP. All individuals who were originally separated and who are subsequently reemployed from a continuous period on OWCP rolls will have any previously unused sick leave recredited to their account, regardless of the length of time the employee was on OWCP and off postal rolls. **Exception:** Sick leave may not be recredited if the employee applied and was approved for disability retirement regardless of whether the employee actually collected the annuity.

513.8 Retirements or Separations

513.81 General. No payment is made for accumulated sick leave when an employee retires or separates.

513.82 Retirement.

513.821 Credit for Sick Leave. Provisions of the Civil Service Retirement law provide for the granting of credit for unused sick leave in calculating retirement or

LABOR RELATIONS



June 10, 1996

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Bill:

This will serve to respond to your correspondence dated May 7 and 22 requesting the Postal Service position on whether the employer may require an employee to use annual leave that is advanced but not accrued.

Your letter states, "As you are aware, full time employees are advanced annual leave at the beginning of the leave year. The blanket USPS policy of requiring employees to exhaust all leave prior to granting LWOP would require an employee to be charged leave that has not been earned."

There is no blanket policy requiring employees to exhaust all leave prior to granting LWOP. As you have previously been notified, approval of LWOP is at the discretion of the supervisor based on the needs of the employee, the needs of the service and the cost to the service. It follows that in some cases LWOP may be denied while the use of annual leave would be approved. Where an employee has no annual leave, LWOP would not be denied for an otherwise approved absence as long as there is no negative effect on the cost and needs of the service.

Your concern regarding the use of annual leave which has been accrued but not earned appears to be self-serving in this instance. You make no mention of the potential liability accrued by the employer by virtue of advancing annual leave to all full-time employees at the beginning of each year. Many, if not most, employees use annual leave before it is actually earned. You can well imagine the reaction of our employees if we were to change that practice and advise employees that they could only use annual leave on a 'pay-as-you-go' basis. We seriously doubt that this is your intent but it is always useful to look at both sides of the scale.

With regard to your question concerning the provision of Section 513.61 of the Employee and Labor Relations Manual, there has been no change to this provision. If there is a particular District or Area where you believe there is a problem with this provision, and you bring it to my attention, I will address it.

If there are any questions concerning this matter, you may contact Curtis Warren of my staff at (202) 268-5359.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony J. Vegliante".

Anthony J. Vegliante
Manager

Contract Administration APWU/NPMHU

JUN 1996
Received
Office of The
Executive
Vice President

Employer Cannot Force Substitution of Accrued, but Unavailable Vacation Leave Toward FMLA Leave

An employer cannot force an employee to substitute accrued paid leave that he would not otherwise be entitled to use in the current vacation year toward Family and Medical Leave Act (FMLA) leave, said Daniel Sweeney, the Wage and Hour Division's deputy assistant administrator, in an opinion letter released May 12, 1995.

In this case, the employee was told by his employer that he must substitute vacation leave that he is not yet entitled to use for part of his FMLA leave. The employer's vacation leave plan stipulates that an employee who has worked 800 hours in the current vacation year earns paid vacation leave that may not be used until the next vacation year.

Under §102(d)(2) of the FMLA (Appendix I, page 5),

"an employee may elect, or an employer may require the employee, to substitute certain of the accrued paid vacation leave, personal leave, family

An employer cannot require an employee to use leave that is not yet available to the employee to use under terms of the employer's leave plan.

leave, or sick or medical leave of the employee for the unpaid leave provided under the Act." The Department of Labor (DOL) has interpreted this provision "to mean that the employee has both earned the leave and is able to use that leave during the FMLA leave

period," Sweeney said. An employer, therefore, cannot require an employee to use leave that is not yet available to the employee to use under terms of the employer's leave plan, Sweeney stated.

He said that "the foregoing would neither prevent an employer from voluntarily advancing paid leave to an employee nor an employee from voluntarily accepting such leave during FMLA absence." The FMLA states "nothing in this Act or any amendment made by this Act shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act or any amendment made by the Act" (§403, Appendix I, page 12), Sweeney noted.

Covered Employers Must Comply With Notice Requirements Regardless of Employee Eligibility

Employers that are covered by the Family and Medical Leave Act (FMLA) but do not have eligible employees must still comply with the act's general notice requirements, said Daniel Sweeney, the Department of Labor's Wage and Hour Division deputy assistant administrator, in a May 17, 1995, opinion letter.

The letter suggests that the covered employer is a public agency with fewer than 50 employees. DOL states that all public agencies are covered by

the FMLA, regardless of the number of workers they employ (§102, Appendix I, page 4).

The FMLA requires that all covered employers post in a conspicuous place at the worksite a notice of the act's provisions and information concerning procedures for filing complaints of violations (§109, Appendix I, page 9), Sweeney said. This was emphasized in the preamble to the final rules, which stated that all covered employers must post a notice to inform

employees of the FMLA's provisions, regardless of whether the employer has any eligible employees. "This section also notes that there is no authorized exception that relieves covered employers from this notice requirement when they have no eligible employees," Sweeney said.

DOL does not have the option under the act to waive the posting requirements for employers, as suggested by comments to the final rules, Sweeney stated. ✱



UNITED STATES POSTAL SERVICE
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WASHINGTON DC 20260-4100
TEL (202) 268-3816
FAX (202) 268-3074

SHERRY A. CAGNOLI
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

August 26, 1991



Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Mr. Burrus:

This letter is in further response to your July 30 letter concerning modification of PS Form 3971, Request For or Notification of Absence.

The intent of the Memorandum of Understanding relating to paid leave and LWOP is expressly stated in the first sentence of the Memorandum. It was intended only to make clear that supervisors would not disapprove employee requests for LWOP solely because the employee had an annual leave or sick leave balance.

The Memorandum of Understanding did not change any of the existing procedures for requesting leave nor does it require any change in PS Form 3971. The employee still requests the type of leave desired, and the supervisor approves or disapproves the employee's request, but it will not be disapproved solely because the employee has a paid leave balance. However, there may exist other valid reasons why the employee's request for a type of leave may be denied by the supervisor.

There is not, in our opinion, any reason to revise or modify the present PS Form 3971.

Sincerely,


Sherry A. Cagnoli



OFFICIAL OLYMPIC SPONSOR

MEMORANDUM

The undersigned parties negotiated a Memorandum of Understanding (MOU) entitled "LWOP in Lieu of SL/AL" that allows an employee to request Leave Without Pay (LWOP) prior to exhausting annual or sick leave. The following serves as a guide for administering these newly negotiated MOU provisions.

*The basic intent of (in) this MOU is to establish that an employee need not exhaust annual or sick leave prior to requesting LWOP. One example of the term "need not exhaust" is (where) **when** an employee requests maternity or paternity leave and was previously required by local management to exhaust their sick or annual leave prior to receiving LWOP. An employee now has the option of requesting LWOP in lieu of sick or annual leave, (when they reach the point where they may "exhaust" their leave benefits).*

It was not the intent of this MOU to increase leave usage (i.e., approved time off). Moreover, it was not the intent that every or all instances of approved leave be changed to LWOP thus allowing the employee to accumulate a leave balance which would create a "use or lose" situation. Furthermore the employer is not obligated to approve such leave for the last hour of the employee's scheduled workday prior to and/or the first hour of the employee's scheduled workday after a holiday.

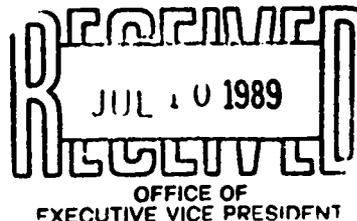
This MOU does not change (impact) Local Memoranda of Understanding regarding procedures for prescheduling annual leave for choice or nonchoice vacation periods. It also was not intended to provide employees the opportunity to preschedule LWOP in lieu of annual leave for choice or nonchoice periods. (or increase leave usage. An employee may at a later date request to change the prescheduled annual leave to LWOP, subject to supervisor approval in accordance with normal leave approval procedures. however, this option is available to an employee only if they are at the point of exhausting their annual leave balance and the employee must provide evidence of such to their supervisor at the time of the leave request (e.g., pay stub)).

This MOU does not establish a (there is no) priority between incidental requests for annual leave or LWOP when several employees are simultaneously requesting such leave. The normal established local practice prevails, i.e., whether leave requests are approved in order of seniority or on a first come first serve basis or other local procedure. This memorandum of understanding has no effect on any other leave provisions contained in the Employee and Labor Relations Manual or other applicable manuals and handbooks other than specified by its specific terms.



UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

JUL 3 1989



Mr. William Burrus
Executive Vice-President,
American Postal Workers Union,
AFL-CIO
1300 L Street, NW,
Washington, DC 20005-4107

Dear Bill:

This is in response to your June 5, 1989 letter regarding the use of incremental leave in conjunction with leave without pay (LWOP) for short-term absences.

As you will recall, the language in question had its genesis as a union proposal during 1987 negotiations. Its purpose was to draw attention to an already existing regulation and to permit those employees on extended absence to stretch their available leave over a longer period so as not to endanger their health benefits eligibility or their Article 6 protection. The language also emphasized the agreement reached in a Step 4 settlement (H1C-3W-C 13620) which forbade the use of approved leave in conjunction with leave without pay (LWOP) in order to receive holiday pay.

The application of this language to short-term absences was never intended by the U.S. Postal Service and was only discussed in relation to the aforementioned holiday pay scenario. In every case, the requested leave is subject to the normal leave approval procedures. Therefore, we are not in agreement with your position that the provisions of Article 10, Section 6, would be applicable to short-term leave.

I trust this sufficiently responds to your inquiry.

Sincerely,

Joseph J. Mahon, Jr.
Assistant Postmaster General



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

October 21, 1987

Dear Mr. Fritsch:

In the meeting of October 19, 1987 between the unions (APWU/NALC) and the Postal Service the parties discussed the "minimum charge" for leave newly negotiated in the 1987 National Agreement.

It is our understanding of the USPS' position that employees may be required to exhaust their leave balance (sick and/or annual) prior to approving LWOP for approved absences.

The unions interpret the provisions of Article 10 as permitting employees to utilize annual and sick leave in conjunction with leave without pay prior to exhausting the appropriate leave balance subject only to the employers approval of the absence.

In accordance with the provisions of Article 15 of the 1987 National Agreement this is to initiate the issue as a interpretive dispute at step 4 of the grievance procedure.

Please respond as to the employers interpretation at your earliest convenience.

Sincerely,

William Burrus
Executive Vice President

Tom Fritsch
Labor Relations Department
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, D.C. 20260-4100

WB:rb

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Director, Mail Handler Division

Regional Coordinators
Raydell R. Moore
Western Region

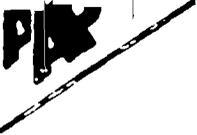
James P. Williams
Central Region

Philip C. Flemming, Jr.
Eastern Region

Romualdo "Willie" Sanchez
Northeastern Region

Archie Salisbury
Southern Region





American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

June 5, 1989

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Mahon:

Pursuant to the provisions of Article 15 of the National Agreement, this letter is to initiate a question to determine if the parties disagree on an issue of major importance.

The 1987 National Agreement contains new language at Article 10 providing that employees may "utilize annual and sick leave in conjunction with leave without pay." The parties previously agreed that this language permits employees on extended absences to use LWOP without exhausting their leave balance. However, managers are refusing to apply the contractual language to short term absences. In some divisions managers have issued blanket policies that LWOP is to be automatically denied, although I assume that they intend to comply with the step 4 settlement on extended absences.

The parties in negotiations did not agree that the referenced language applied only to extended absences and the subject was fully explored as to the Union's intent. We would now like to determine whether or not the USPS is in agreement that an employee may utilize leave in conjunction with LWOP for short term absences, subject to the leave approval procedures.

Your attention and an early reply is requested on this issue.

Sincerely,

William Burrus
Executive Vice President

Joseph J. Mahon, Jr.
Asst. Postmaster General
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

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Director, Mail Handler Division

National Coordinators
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Central Region

Robert C. Flaming, Jr.
Northern Region

Lawrence Bockstien III
Northeast Region

Chris Salisbury
Southern Region

Walter R. Moore
Western Region



UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100



Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Re: H7C-NA-C 61
W. Burrus
Washington, DC 20005

Dear Mr. Burrus:

On January 30, 1990, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether Article 10.6 of the National Agreement authorizes employees to use leave and LWOP simultaneously for short term absences.

It is our position that no national interpretive issue involving the terms and conditions of the National Agreement is fairly presented in this case. However, inasmuch as the union did not agree, the following represents the decision of the Postal Service on the particular fact circumstances involved.

Article 10.6 was added to the National Agreement as a result of the 1987 negotiations. The addition had two specific purposes:

1. To permit employees on extended absence to stretch available leave over a long period of time to keep medical benefit eligibility and Article 6 protection.
2. To forbid employees from using approved leave in conjunction with LWOP for the purpose of receiving holiday pay.

William Burrus

2

Article 10.6 was not intended to apply to short term absences. The JBC's 1987 proposals and minutes from negotiating sessions confirm this position. Consequently, this grievance must be denied.

Time limits at Step 4 were extended by mutual consent.

Sincerely,

David A. Stanton
David A. Stanton
Grievance & Arbitration
Division

Date _____



EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

MAY 21 1974

Mr. James H. Rademacher, President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

865A73

Re: Glenn Sparrow
Chapel Hill, NC
NB-S-1129(N-8)/3SR-317

Dear Mr. Rademacher:

On April 18, 1974, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure. Time limits for resolving this grievance were extended by mutual agreement.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

It is our position that neither sick leave nor leave without pay can be charged against an employee unless requested by that employee. The evidence available indicates that only 4 of the 82 employees scheduled to report on the day in question were detained because of the snowstorm. Thus, the provisions for granting administrative leave do not apply in this situation. To resolve this case management is directed to review the grievant's time records, and to correct those records to reflect emergency annual leave for the hours in question. We note that management has indicated its intention to assure that no sick leave will be charged to the grievant for the hours in question.

Sincerely,

Peter A. Genereux
Peter A. Genereux
Labor Relations Department

July 30, 1991

Dear Ms. Cagnoli:

The 1990 Arbitrated Contract provides new provisions for the use of leave, permitting the use of LWOP at the employee's discretion. The only way to give any meaning to these new provisions is to modify PS Form 3891 that the employee's request for leave or LWOP occurs after the absence has been approved. The supervisor's decision to grant the request to be absent should not be colored by the leave used.

This was the parties intent in agreeing to the revised language. It would be made meaningless, if the approval is based on whether or not leave is requested.

This is to request your immediate attention to this issue.

Yours in union solidarity,

*William Burrus
Executive Vice President*

*Sherry A. Cagnoli
Asst. Postmaster General
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100*

WB:rb



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

September 6, 1991

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Downes:

The enclosed memorandum, as amended, would be acceptable to APWU as clarification of the new language of Article 10.

An explanation of the changes that I made are as follows:

Paragraph 2 - First sentence: proper sentence structure only

Last sentence: Expands on language of the Agreement

Paragraph 3 - First sentence, grammatical correction only

Second sentence: (or increase leave usage) repeated in prior paragraph

Third sentence: This application was not discussed in negotiations and although it may be permitted should not be included as clarification.

Paragraph 5 - Grammatical change only

Your attention of this matter is appreciated.

Sincerely,


William Burrus
Executive Vice President

William Downes
Director, Office of Contract
Administration
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

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Northeast Region

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Southern Region

Raydell R. Moore
Western Region