

# **STRATEGIC DEFENSE AGAINST STAND-BY TIME**

A STRATEGY BOOK BY NATIONAL BUSINESS AGENTS

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

The controlling Article 19 Handbook language states,

## **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.**

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 1<sup>st</sup> 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 the M-32 Handbook and the APWU did not participate in the authorship of the M-32, any ambiguity found in the USPS authored m-32 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 (C4C-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 provision<sup>1</sup>. 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**

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<sup>1</sup> 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.

**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 leave requests, the drafter of the provision (i.e., the Service) would have included such a requirement.**  
***Arbitrator Edwin H. Benn (C7C-4U-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)***

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 or planned/scheduled STAND-BY TIME violates the M-32.

## **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 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.

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

PERFORM 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 and out of schedule compensation pay (overtime and administrative, straight time) 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 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,

Jeff Kehlert  
National Business Agent

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## HANDBOOK M-32 REVISION

**Stand-by Operations**

Effective October 30, 2003, Handbook M-32, *Management Operating Data Systems*, is revised to emphasize the need for accurate accounting and use of stand-by operations to record nonproductive bargaining unit guaranteed hours.

We will incorporate these revisions into the next printed edition of Handbook M-32 and also into the online version of the handbook, which is accessible at the Postal Service™ PolicyNet Web site; go to <http://blue.usps.gov>; click on *More References*, then *HBKs*.

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

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<b>3</b>	<b>Work Hours</b>				
	*	*	*	*	*
<b>3-4</b>	<b>Specific Clocking Procedures</b>				
	*	*	*	*	*

[Revise title and text of 3-4.4 to read as follows:]

**3-4.4 Stand-by Hours and 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 operation numbers.

**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. Stand-by hours do not include nonproductive time for temporary equipment breakdowns of 10 minutes or less.

*Stand-by operations* are designated by operation numbers specifically provided for recording nonproductive hours in Section 3-4.4.6 and Appendix A.

**3-4.4.2 Applicability to Facilities**

This policy applies to bargaining unit work hours in Function 1 processing facilities, such as processing and distribution centers/facilities, bulk mail centers, and air mail centers or facilities; in Function 2 installations, such as Post

Offices™, stations, and delivery distribution units; and in Function 4 retail units and central forwarding units.

Generally, remote encoding centers 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 remote encoding centers.

**3-4.4.3 Responsibility**

The vice president of Network Operations Management provides the policy direction and the reporting systems and operation numbers for recording all types of workhours, including those for stand-by operations.

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

**3-4.4.4 Use of Stand-by Operations**

Recording of 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 a 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.

**3-4.4.5 Placing 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.

### 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

\* \* \* \*

— Operations Technical Support,  
Network Operations Management, 10-30-03