



January 16, 2001

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 December 21, 2000 letter, requesting the Postal Service's position on whether Leave Without Pay (LWOP) used for union business is counted toward the 1250 hours required for eligibility under the Family Medical Leave Act (FMLA).

Our long-held position on this issue has not changed. As you stated in your letter, when an employee is on LWOP for union business, the time on such status is not being counted by the Postal Service toward the 1250 work hour eligibility requirement.

Union officials on LWOP are not subject to joint employment status under Section 825.106 of the FMLA.

The Postal Service has never considered itself a "joint employer" under FMLA with the American Postal Workers' Union, AFL-CIO (APWU) because of our divergent interests. Employees on LWOP for union business do not have their work or working conditions controlled by the Postal Service, are not acting directly or indirectly in the interest of the Postal Service, and are not providing the same services as those provided by the Postal Service.

Furthermore, Section 825.110(c) of the FMLA states that whether an employee has worked the minimum 1250 hours of service is determined according to the principles established under the Fair Labor Standards Act (FLSA) for determining compensable hours of work. LWOP hours are not work hours within the meaning of FLSA. As stated on page 9 of the APWU publication, *How the Family and Medical Leave Act Affects You*, "The requirement of 1250 hours during the 12-month period prior to the date leave commences includes 'worked hours' only. Periods of annual, sick, administrative leave or LWOP for any purpose, including union activity, are not counted as 'worked hours.'"

Please contact Charles Baker at 202-268-3832 or Sandra Savoie at 202-268-3823, of my staff, if you have further question on this issue.

Sincerely,

A handwritten signature in black ink that reads "Doug A. Tulino".

Doug A. Tulino
Manager
Labor Relations Policies and Programs