

COLORADO



LOCAL 321

NATIONAL POSTAL MAIL HANDLERS UNION

Division of the Laborer's International Union of North America,
AFL-CIO

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~~FOR YOUR INFORMATION~~

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The Perfect Storm

Much of Colorado has suffered through a three-peat of winter storms and accompanying blizzard conditions in recent weeks. Making matters worse, the winter storms came during the heaviest two weeks of the mailing season. The timing and magnitude of these blizzards brought processing and delivery to a screeching-halt. The storms interrupted and delayed air travel, truck and vehicle movement across the entire state. As everyone knows, the entire metropolitan area was in gridlock. The main processing and distribution centers and the associate offices are a disaster, processing is delayed by a full-week in many locations and if that is not enough, flat volume will soon spike as we come out of the Christmas parcel surge.

For the first time in my 20 years of Postal service, the USPS curtailed processing and delivery operations in advance of the real mess; this is the good news. The first storm rolled in on December 20, 2006. Management shut down operations that afternoon, and agreed to pay administrative leave to those that reported and went home early. Management also agreed to pay administrative leave to the next 3 shifts, (T-3 on 12/20, and Tour 1 & 2 on 12/21/06);

This is the bad news; generally speaking, the Union believes that administrative leave should be paid into December 22, 2006; management disagrees and grievances have been filed. The Union has also filed grievances challenging management's failure to grant administrative leave on the second less-severe storm that rolled in on Friday December 29, 2006. Colorado's Governor declared states of emergency for both storms, and many employees could not report to work. Depending on each facilities circumstance, several Class Action Act of God/Administration Leave grievances have been filed.

What is an Act of God?

We have many new employees who are not familiar with our *Act of God* provisions, and considering the fact that it is a very rare situation when this leave is granted or approved, many *seasoned* mail handlers may not fully understand the regulations. Here is a brief overview of the regulations:

519.21 **Acts of God**
519.211 **General**

Acts of God involve community disasters such as fire, flood, or storms. The disaster situation must be general rather than personal in scope and impact. It must prevent groups of employees from working or reporting to work.

The key phrase in this regulation is "groups of employees..." The storm must impact and effect groups of employees. A fire in a community that prevents someone from reporting to work probably would not qualify for Act of God/ administrative leave whereas a metropolitan-wide blizzard obviously impacts large groups of employees and in the union's opinion, does qualify.

Each of the 3 storms was different in magnitude. When evaluating the Act of God regulations to each storm, think about your co-workers. Did the storm prevent *groups of employees* from reporting to work, and when did this situation end? The phrase "groups of employees" is intentionally ambiguous. It gives management (and the Union) an opportunity to argue the scope of impact. Secondly, the parties must determine when the Act of God situation ended, when could employees reasonable be expected to report to work and did they return?

519.213 Determining the Cause of Absence
Postmasters and other appropriate postal officials determine whether absences from duty allegedly due to "acts of God" were, in fact, due to such cause or whether the employee or employees in question could, with reasonable diligence, have reported for duty.

Another part of the regulation addresses *reasonable diligence*. Just because *groups of employees* did not or could not report to work does not (in and of itself) mean that management must or will grant administrative leave under the Act of God provisions. By regulation, employees must demonstrate reasonable diligence when attempting to report to duty. If you have any doubt that management will fight or dispute most Act of God situations, I'd encourage you to read the regulation again; it references absences ALLEGEDLY due to Acts of God. This Postal regulation casts doubt on the mere possibility that an Act of God could exist.

Once again, the regulation is intentionally ambiguous. Reasonable diligence for one is risky and unrealistic for another. The storm may be heavier on one side of town over another. Some employees drive ¾ Ton 4-wheel drive trucks while others drive Volkswagen bugs. The highways may

have been clear, but your community side-streets had 30 inches of unplowed snow. At the MPA, mail handlers reported to work, but could not get into the parking lot because mail trucks were blocking all vehicle movement all the way to Tower Road. These employees were certainly diligent about attempting to report to work and should not be punished because the USPS could not provide a way into the facility grounds.

There are many different circumstances, many variables and many ways to challenge each storm. We are calling on you for assistance. We have to prove these cases. The Union has to show that conditions warrant administrative leave beyond T-2 on December 21, 2007. Moreover, management is currently denying all administration leave requests for the second day of the first blizzard (except tour 2) and for the entire second storm of December 29, 2006.

If you took pictures, the Union would appreciate copies with explanatory captions; we also need detailed statements of your experiences and attempts to report to work. Please help us by providing these written statements and photographs to your Branch Presidents or facility representatives. You can also send them to the Union hall, but the clock is ticking on these grievances. We need them ASAP.

519.215 Employees Prevented From Reporting
Employees scheduled to report who are prevented from reporting or, who after reporting, are prevented from working by an act of God may be excused as follows:
a. Full-time and part-time regular employees receive administrative leave to cover their scheduled tour of duty not to exceed 8 hours.

b. Part-time flexible employees receive administrative leave, subject to the 8-hour limitation, for their scheduled work-hours, as provided in 519.214c.

519.216 Employees on Annual Leave, Sick Leave, or LWOP
Employees on annual leave, sick leave, or LWOP remain in such status. They are not entitled to administrative leave.

These regulations cut both-ways. Management has agreed to pay administrative leaves to those who were sent home on December 20, 2006 thru T-2 on December 21, 2006. However, they are refusing to pay those that were on leave citing the above captioned regulation. If you were on sick leave or pre-approved annual leave, management will fight all attempts to secure administrative leave.

Holiday Schedules During an Act of God

The first storm severely impacted the 3 days of the Christmas holiday schedule and the second storm hit during the 3 days of the New Years holiday schedule. I am afraid to listen to weather predictions as we approach the Martin Luther King holiday period. I know that the phrase "holiday schedule" is an ugly term in Colorado right now. It

doesn't feel like a holiday when you are mandated to work and many folks were mandated for Christmas and New Years.

As I previously stated, Act of God regulations cut both ways. On one hand, nearly everyone received at least one shift of administrative leave and management knows the NPMHU will fight for additional admin leave as appropriate. On the other hand, management used the holiday Act of God rules to mandate nearly everyone for Christmas and New Years. In many facilities management pulled the original Christmas Holiday list that was posted and changed it to full mandates across the board. In most facilities, management also pulled and posted the New Years Holiday list for full mandates across the board.

Contract Interpretation Manual:
If management identifies the need for additional employees for holiday work after the holiday schedule has been posted, the overtime desired list is relied upon. In a national arbitration case, Arbitrator Mittenhal ruled that when management needed more employees for holiday work due to a change in conditions after the holiday schedule had been posted, the decision to schedule employees from the overtime desired list rather than utilizing holiday volunteers was proper and did not violate Section 11.6 of the National Agreement. Once the holiday schedule has been posted, volunteers have no preference over employees on the overtime desired list when management determines that additional employees are needed for holiday work.

In the event that, subsequent to the Tuesday posting period, an emergency situation attributable to Act(s) of God arises which requires the use of manpower on that holiday in excess of that scheduled in the Tuesday posting, full-time regular employees who are required to work or who volunteer to work in this circumstance(s) do not receive *holiday scheduling premium*.

Based on the Act of God, emergency situation and change in service condition after the Christmas Holiday Schedule was posted, the Union will not successfully argue for an additional 50% due to Christmas holiday posting errors. In light of the circumstances, this grievance is fruitless. The Union is however filing appropriate grievances challenging the scheduling of the New Years holiday schedule in part referencing the following language.

Contract Interpretation Manual:
...However, management is to avoid "playing it safe" by over-scheduling and then later releasing those employees not needed. As the arbitrator noted, "Management certainly would not have had the right to schedule all regulars and part-time regulars just to be sure that sufficient manpower was on hand on the holiday and then to delete all such names and only require casuals to work the holiday." He further noted that management has an obligation under Section 11.6 to "use as few regular and part-time regular employees as possible on a holiday and to allow them to be off from work on their regularly scheduled holidays."

In Unity, *Mike*
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