



I'm very pleased to have finalized a major class action grievance on this issue, and I want to give a full accounting of how this matter finally came to a resolution.

Let me start by clarifying the oft-misused terms involved. "Standby" is the requirement to be available to respond to work, if requested, within a short period of time. This is the subject of this grievance. "On-call" is a term that officially applies only to court. We are often placed "on-call," which means we are obligated to respond to court, if requested, within a short period of time. These are similar concepts, but each has very specific applications.

On September 15, 2006, League Director Tim Sands (now retired) filed a class action grievance on behalf of all League members who were, or had been, required to remain on standby. The intent and purpose of the grievance was the allegation that the Department had failed to pay *weekday* standby (from Monday to Friday) going back three years to 2003. The League obtained opt-in forms from roughly 2,000 members who worked assignments that, they believed, should have qualified for such *weekday* compensation. Discussions with the Department went nowhere, as they were firm in their rejection of any claim for *weekday* standby time.

When I took over as the legal chairman in 2009, I obtained a legal opinion on the status of the law and whether or not we could prevail in arbitration on the M-F *weekday* claim. The answer was a firm no. There was not a single case anywhere in the country that supported our claim that members who were formally on standby for the Department *had* to be paid for *weekday* time. While it was certainly possible that an individual arbitrator could rule on behalf of a single member, it would almost surely be appealed by the City and they would certainly succeed in a court of law and have such a decision overturned.

Shortly thereafter, at the League's Delegates Conference that year, Assistant General Counsel Elizabeth Silver Tourgeman and I made a handshake deal with then-Commander Jose Perez, who was the Department's Employee Relations Administrator at the time. In exchange for dropping all claims to *weekday* standby, the Department agreed to correct the many problems in how standby was being handled across the Department and to properly compensate anyone who had been improperly denied standby compensation for *weekends/holidays*.

It's important to note here that the MOU is where the requirement arises to pay someone for *weekend/holiday* standby. You may also know that there are three entities that get *weekday* standby compensation: SWAT, Bomb Squad and Metro K-9. The first two were negotiated many years ago and K-9 was added soon thereafter. While the League has often tried to negotiate for additional units to be added to that list, no further changes have been made.

I then sent new surveys out to everyone who had previously completed one and the League solicited responses from anyone else, active or retired, who believed they may have been improperly paid, or outright denied, *weekend/holiday* standby compensation. We used the *Thin Blue Line*, the League's website and the Department's LAN system to get the word out. Because we had to draw the line somewhere in order to proceed to a settlement, we set the deadline for opting in as October 31, 2009. This process left several hundred members with potential claims, each of which had to be investigated.

We obtained voluminous records from the Department and directly from members. With that information we were able to whittle the list to approximately 125 members, all of whom were formally interviewed. That process resulted in 56 members, active and retired, who I believed had legitimate claims to *weekend/holiday* standby. Using all available records and notes from

interviews and tracking down and interviewing a number of supervisors and commanding officers, I then calculated what I believed each member was owed. Those numbers were given to Employee Relations Group (ERG) and final discussions began. However, after a number of meetings the Department refused to agree on about a quarter of my list. That left us with a serious problem. If we settled for those agreed upon and arbitrated the rest, it was very likely that we would lose some of the cases and end up with very inconsistent decisions. It is also quite expensive to arbitrate as the City and League split the costs equally for all hearings, about \$3,000 to \$4,000 for each side per case. In some cases the records simply don't exist anymore and as we would bear the burden of proof in each case, even if we won in part, many of them would be limited only to the periods of time we could prove.

So we proposed a global settlement to the Department. This resolved the concerns of both sides, ended all of the claims/potential future liability and ensured that everyone who should be paid, got paid. The final obstacle was the cost. With more than six years of back pay for many, the final price tag on this is well over \$2.2 million. The retirees involved have to be paid in cash. And of course the City and Department are in serious financial trouble. So we agreed to spread out the payments over three years for those retirees getting the largest chunks of money. After all, those individuals all earned it over a five- or six-year period.

We also agreed to some limits on the new "banks" of time going to the actives:

- These hours will not count against your 600/800 hour MOU limits.
- These hours cannot be used for T/Os unless you have exhausted your other overtime banks.
- Upon retirement, these hours will be cashed out just like any other bank of time.

The League also provided the Department with a legal release, meaning that this issue is now resolved for all members.

One of the things I am most pleased to have resolved with this is the recognition by the Department that anyone who is on standby is not required to respond during the week. In the past, members have been threatened with reassignment, loss of benefits like take-home cars or cellphones or outright discipline if they didn't come in when called during the week. That is no longer tolerated. All command officers have been told this is not allowed and I know firsthand that it has trickled down to all the units that were the biggest offenders in the past. I will also say that, as someone who worked a standby assignment for seven years, I do think that when we agree to work such an assignment we should normally take the callouts. We get paid overtime when we respond and we didn't end up in that assignment by accident — we all worked hard to get there. So, yes, I encourage you to take the callouts, but on those rare occasions that you cannot respond, know that you don't have to and no personnel action will be taken against you. But if you don't intend to ever go out then I would encourage you to find another assignment. Also know that if need be, you can be ordered to respond. That means that if they don't have anyone else to call, then they can order you to go under penalty of insubordination.

Also, all of the positions and units that are getting compensated via this settlement are now getting standby pay. To the best of my knowledge, we have achieved uniform application of standby in like assignments across bureaus and divisions, something that did not exist before. Commander Weinstein will enforce any disparities that are brought to our attention. That said, do not misinterpret this to mean that I think every unit that should get standby is now getting standby. I do think we have rectified the most egregious of such problems, but if others are brought to my attention I will certainly sit down with Weinstein and see what can be done. Given the current budget problems, it is unlikely that any new units will immediately get added to formal standby, but that doesn't mean it will never happen.

Hopefully, this article will clarify the "why" of why you did or didn't end up getting anything out of this grievance. While only 56 individuals will be paid, they did not get anything close to what they would have received had they been paid properly from the start. However, many others have benefited from this settlement due to the corrected rules and uniform application of standby.

Finally, I want to give credit where it is due. Cindy Scott, of the League's Legal Claims Unit, has been instrumental in this and has assisted me with hundreds of hours of work and all of the record keeping. Cmdr. Jeri Weinstein and her predecessor, Dep. Chief Jose Perez, were instrumental in resolving this and their staff at ERG, especially Det. Theresa Hartter, who put in untold hours as well. Police Administrator Gerald Chaleff is also due a big thank you as he was the final level of approval. Elizabeth Silver Tourgeman, Hank Hernandez and City Attorney Wayne Song were all involved on the legal side.

As always, call or email me if you have any questions. I can be reached at (213) 251-4585 or johnmumma@lappl.org.