

# FRONTLINES

## AFSCME COUNCIL 18 STEWARDS NEWS

MAKING JUSTICE HAPPEN

January 2013 / Issue #1



### 7 TESTS OF JUST CAUSE

**EDUCATION - the single most powerful employee protection against job loss due to discipline. Know and understand the Seven Tests. Jobs depend on it.**

The basic underlying principle in discipline cases is that management must have "just cause" for imposing the disciplinary action. Many contracts state that discipline will only be given "for just cause."

A common test for determining whether just cause existed was developed by arbitrator Carroll Daugherty in a 1966 case. This standard has come to be known as the "Seven Tests of Just Cause." To meet the standard, management must be able to answer "yes" to each of the following seven questions.

A "no" answer to one or more of the following questions indicates

management's action was arbitrary, capricious and/or discriminatory in one or more respects. The union can argue that management did not have just cause to take the disciplinary action.

1. Was the employee adequately warned of the probable consequences of his or her conduct?
2. Was the employer's rule or order reasonably related to the efficient and safe operation of the job function?
3. Did management investigate before administering the discipline?

#### Weingarten Rights:

"if the discussion in this meeting could in any way lead to my being disciplined or terminated, or impact on my personal working conditions, I request that my Steward, Local Officer or Union Representative be present. Without a Union Representative, I choose not to answer any further questions at this time.

**This is my right under a U.S. Supreme Court decision (Weingarten)**

4. Was management's investigation fair and objective?
5. Did the investigation produce substantial evidence or proof that the employee was guilty of the offense?
6. Has the employer applied its rules, orders and penalties evenly and without discrimination?
7. Was the amount of discipline reasonably related to the seriousness of the offense and the employee's past service and record? (Did the "punishment fit the crime"?)



### ARBITRATIONS, THE 45 DAY RULE, AND BUILDING TENACIOUS STEWARDS

By digging in our heels and being willing to fight for the grievant all the way through arbitration when necessary, AFSCME members have realized "significant improvements" at the New Mexico Corrections Department (NMCD). According to Local 3422 PNM President, Steward, and Corrections Officer Vanessa Rios, "We're filing less grievances these days and settling more issues informally at the lower level."

Creating a more "just workplace" did not happen overnight with stars aligning and management waking up on the right side of the bed for a change. Every inch of improvement was a struggle. AFSCME Stewards filed grievance after grievance to break

the habits of employers who thought they did not have to follow their own rules or abide by our contract.

Officer Rios stepped up and represented a member through arbitration after the department repeatedly violated our state contract by serving notices of contemplated actions (NCA) beyond the 45 day limit. The collective bargaining agreement between the State of NM and AFSCME Council 18 says in "Article 24, Section 4. Time Limits. Except for disciplinary actions related to performance which are governed by Article 9 and/or cases where outside agencies or divisions are involved in the investigation, the Employer may impose any disciplinary action or issue a notice of contemplated action no later than 45

days after it acquires knowledge of the employee's misconduct for which the disciplinary action is imposed, unless facts and circumstances exist which require a longer period of time".

Violating the 45 day rule is one of the most common contract violations throughout state government. AFSCME has had to file grievances and/or take 45 day rule cases to arbitration dozens of times since the language went into effect. Whether management is making administrative errors prompting them to rescind and reissue discipline (as in Rios's case), or something more sinister is taking place, such as the state going on fishing expeditions for grounds to discipline employees who have gotten crosswise with powerful

managers, it is clear management refuses to adhere to the legal protections afforded under Article 24.

Management may NOT extend beyond the 45 day rule, as NM Corrections argued for in 2009 for example, that the Administrative Services Division was an outside agency when an employee working within Probation/Parole Division was being investigated.

Management attempted to separate their own department and distinguish divisions as a type of outside agency in order to justify submitting a contemplated action 70 days after the employer had knowledge of an alleged misconduct. Two separate arbitrators agreed that this interpretation would render the contract language meaningless.

Rios advises, "The challenge in any arbitration is to know the contract like the back of your hand. Understand the merits of the case inside and out. Review what policies and procedures the state has violated. Be well prepared and stayed focused, Vigilance in upholding our hard fought for rights benefits ALL our members," Concludes Rios.

## E.L.I.T.E. STEWARD / LEADER TRAINING PROGRAM

EMPOWERMENT THROUGH LEADERSHIP, INVOLVEMENT, TEAMWORK, AND EDUCATION

*AFSCME is built on the foundation of strong stewards, defending members rights in the workplace through effective representation, supporting collective action, and making members aware of their rights at work. Sign up for 2013 trainings today!*

### Core Programs

- Level 1, Part 1 – Basic Steward Training / 2 day
- Level 1, Part 2 – Grievance Handling, Disciplinary Actions / 1 day
- Level 2, Part 1 – Communications, Political Action, Community Building / 1 day
- Level 2, Part 2 – Local Union Governance, POWER (conducted at local unions) / 5 hours
- Level 3, Part 1 – Advanced Grievance Handling, Arbitrations / 3 days
- Level 3, Part 2 – Brief Writing / 2 days
- Level 4 – Contract Negotiations, Media / 4 days

### Supplemental Programs

- Secretary-Treasurer Training / 1 day
- Public Safety Blue Breakfast / 4 hours
- Budget Analysis / 1 day
- Health & Safety / 1 day

Steward Certification upon completion of Level 1, Part 2

Local Union Recognition upon completion of Level 2, Part 2

Steward Incentive upon completion of Level 3, Part 2

DATE	LOCATION	TRAINING, ACTIVITY	CORE OR SUPPLEMENTAL
January 18, 19 (Fri, Sat)	Las Cruces	ELITE Level 1, Part 1	Core
January 31 (Thurs)	Santa Fe	Blue Breakfast	Supplemental
February 6 (Wed)	Santa Fe	Lobby Day	Supplemental
February 8, 9 (Fri, Sat)	Santa Fe	ELITE Level 1, Part 1	Core
February 8, 9 (Fri, Sat)	Silver City	ELITE Level 1, Part 1	Core
February 22, 23 (Fri, Sat)	Albuquerque	ELITE Level 1, Part 1	Core
March 23 (Sat)	Las Cruces	ELITE Level 1, Part 2	Core
March 23 (Sat)	Santa Fe	ELITE Level 1, Part 2	Core
March 30 (Sat)	Albuquerque	ELITE Level 1, Part 2	Core
April 6 (Sat)	Silver City	ELITE Level 1, Part 2	Core
April 20 (Sat)	Albuquerque	Sec-Treas	Supplemental
May 4 (Sat)	Albuquerque	ELITE, Level 2, Part 1	Core
May 18 (Sat) - tentative	Albuquerque	Budget Analysis	Supplemental
April - July	statewide	ELITE, Level 2, Part 2	Core
Saturday, June 01, 2013	Albuquerque	PEOPLE Conference	Supplemental
June - July	Albuquerque - TBD	Council 18 Convention	Supplemental
August (3 days) - tentative	Albuquerque	ELITE Level 3, Part 1	Core
October 26 (Saturday)	Las Cruces	Sec-Treas	Supplemental
October (4 days) - tentative	Albuquerque	ELITE Level 4	Core
November (2 days) - tentative	Albuquerque	ELITE Level 3, Part 2	Core

## AFSCME COUNCIL 18

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