

FRONTLINES:

STEWARDS NEWS-MAKING JUSTICE HAPPEN!



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Experience and Quick Action Halt NMDOT Employees Exposure to Asbestos



An oversized hot oil tank had resided at the San Jon NMDOT maintenance yard east of Tucumcari for so long that most employees had forgotten about any protocol that might have accompanied its existence or how to handle it in any emergency.

That is why when the tank became damaged during a move, nobody snapped to the urgency as the insulation spilled out and blew around the yard. Protected by cloth face masks, NMDOT employees initially began collecting and bagging the debris.

Suspecting the insulation could be asbestos, AFSCME acquired a picture of the tank. A senior NMDOT employee and an AFSCME steward immediately recognized the tank (there are a number of them stored around New Mexico NMDOT yards) and remembered a warning he had received years before to “not mess” with the tank since it contained asbestos insulation.

The Steward notified AFSCME Staff Representative Chris Armijo who brought the issue to New Mexico’s OSHA office. The Director, Bob Genoway, immediately dispatched EPA officers to inspect the tank. 72 hours later, samples of the insulation had been taken for analysis and the NMDOT employees were taken off the unnecessarily dangerous job.

THE LESSONS: Your AFSCME staff representatives and stewards have knowledge and experience. If you suspect a

situation may be negligently dangerous, it probably is! Make sure every union bulletin board in your work area has your contact info. Acting fast can protect workers from being exposed to dangerous situations and documentation is critical.

In this situation AFSCME immediately documented the workers’ contact with the asbestos. In addition to acting fast, and halting exposure to asbestos, the documentation will prove vital in the future should any long term health effects arise.

Thanks to the quick work by the union, several more of the hot oil tanks have been identified at NMDOT facilities across the state and will be removed using proper and safe disposal techniques.

STEWARD ESSENTIALS:

Digging Deep for the TRUTH!

A steward must have great instincts and be able to advocate for members in the most difficult circumstances. Often, when we’re called to represent a member, the story you’ll hear from the member will differ from the story you’ll hear from management, or even other members.

Even though our first instinct is to believe our brother or sister word for word, our primary MISSION is to defend that member and their rights. Sometimes, that means digging deeper for the truth.

- ★ Investigate! Get more than two sides of the story.
- ★ Recognize that the member is fighting for their livelihood; they might not have an impartial version of the facts.
- ★ Level with the member when their story doesn’t match the facts, WE CAN BETTER advocate for the member if we know the TRUTH.

AFSCME Council 18 is “1,000 Stronger!”: Stewards as Organizers

Signing Up and Activating New Members

In nearly every instance, the first union activist a new employee sees is the steward. Right away you have a golden opportunity to “organize” the new worker – that is, to ask the employee to sign a membership card, to join the union to build workplace power, to take an active role in the union, and to contribute to the union’s political program (PEOPLE).

Stewards must place a high priority on signing up new members, whether the employee is new on the job or the worker has been around for years but – for whatever reason – has not yet joined the union.

Ask Them to Join!

In surveys, the number one reason workers give for not joining a union is “No one ever asked me.” That problem is easy to fix – go out and ask co-workers to join their union.

Steward resources and bulletin board materials are available online at AFSCME18.org, under the Publications tab.



Oral Response Meetings: Defending Members' Rights Effectively!

(While the essentials of an ORM remain the same for city and county locals, this article details the State of NM process)

The Oral Response Meeting [ORM] is your opportunity as a steward to squash or reduce discipline when management actions are heavy handed or without just cause.

The ORM, or written response to contemplated action, is the first formal opportunity for the union member to tell their side of the story when faced by proposed discipline.

Every steward should understand the steps to take when an employee comes to you with a notice of contemplated action [NCA]. If you've never conducted an ORM before, contact a chief steward or local president immediately.

Pay close attention to the dates listed on the NCA. Missing a deadline is the most tragic thing that can happen for the employee. Per State Personnel Board Rule [1.7.11.13], employees in career status have "eleven calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response." There is an additional three days to respond if the employer sends the NCA through certified mail.

A representative of the employee's choosing may respond in writing to NCA on behalf of the employee.

An employee who wishes to respond shouldn't request an ORM immediately at the meeting when served an NCA, but instead, go directly to the Steward. When the employee waits to the last minute to inform the union about the NCA, it becomes very difficult to prepare a proper response, or secure representation.

The employee, together with their union steward, chief steward, and local president will determine the best course of action. For the sake of preparing, it is important to have many eyes look at the situation, at past disciplines, and patterns

of behavior by the employer AND the employee.



The union team must consider if "JUST CAUSE" has been applied before the employer contemplates discipline based on the facts of the case. [SPO Board Rule 1.7.11.10] According to the rule, a career employee "may be suspended, demoted, or dismissed only for just cause."

Review the seven tests of JUST CAUSE [see insert]. Under Governor Martinez's administration, only the first two rules of the seven tests have been considered. Although, every step is essential in building a defense.

If an ORM is requested, the agency shall schedule the meeting within 11 calendar days from the request, unless both parties agree to different timeframe in writing.

Document, document, document. Throughout the rules it is clear the process must be reduced to writing. This

protects the steward and the employee. Every steward has a story about the employee who received a verbal promise from management only to see those promises broken later. **Helpful Tip:** As soon as you sit down with the employee, create a folder with copies of everything and establish the timelines to be sure when action is required.

An ORM is **not** an evidentiary hearing, but an opportunity for the employee to present their side of the story and establish if reasonable grounds exist to warrant the discipline.

Following the ORM, the employer has 11 calendar days to issue a notice of final action, NFA. The employee has 30 calendar days from the date of the final action within which to file an appeal.

REMEMBER the timelines: untimely appeals or notifications that an employee wishes to respond will be dismissed with prejudice. The employee must reach out to the steward after they receive a final action if any appeal process is to begin.

THE SEVEN TESTS OF JUST CAUSE

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." The standard for determining just cause for set in 1966 before arbitrator Carroll Daugherty. In order to meet the standard, management must be able to answer YES to the following seven questions:

- ★ Was the employee adequately warned of the probable consequences of his / her conduct?
- ★ Was the employer's rule or order reasonably related to the efficient and safe operation of the job function?
- ★ Did management investigate before administering the discipline?
- ★ Was management's investigation fair and objective?
- ★ Did the investigation produce substantial evidence or proof that the employee was guilty of the offense?
- ★ Has the employer applied its rules, orders and penalties evenly and without discrimination?
- ★ 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?"

A "no" answer to one or more of the 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.

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