

County Eats Arbitration Costs as Heavy Handed Discipline Overturned

Steward takeaway: Members expose themselves to discipline if they assume role of trainer for green recruits

Issue: Corrections Officers at Bernalillo County Metropolitan Detention Center (MDC), represented by AFSCME Local 2499, are supposed to be trained and certified on tasers issued to them for protection inside the facility. An important aspect of the training requires officers to be exposed to a taser shock prior to carrying the tool.

However, when a senior officer, a long-time member of the the local, obliged a rookie's request to be exposed to the shock of a taser, he ended up facing a 30-day suspension for stepping above and beyond his role as an officer.

County management determined the "training" incident constituted a serious offense and merited disciplinary action in the same class as criminal intent offenses with personal motives, despite the fact that the rookie's request was carried out in a safe manner with no residual harm and was with the intent to increase overall safety inside the facility, and despite the testimony from several officers, the tased rookie and the officer administering the tase that the purpose of tasing the co-worker was for educational purposes.

Local 2499 leadership filed for arbitration as they knew the discipline was an emotional, unfounded, knee-jerk reaction by management which severely threatened our union member's livelihood and family's financial security. And they won!

In overturning the county's decision, the arbiter found that the county failed to consider our officer's spotless record of employment, his positive intentions, and that the severity of the incident was nearly non-existent.



What the county based discipline on, according the arbiter, was pure speculation on a potential "...parable of horrors" and "cavalcade of danger or injury." Basically, the county let their imaginations run wild on 'what-ifs' and handed down discipline based on their worst imagined fears.

The arbiter ruled that the county failed to show just-cause, and the offense did not meet the definition of a 'single serious offense' within the ambit of Article 17.2.2 of the collective bargaining agreement (CBA). The arbiter reduced the 30 day suspension to a written reprimand and ordered the County to pay all arbitration fees and costs.

The takeaway for AFSCME Stewards is to recognize lapses in management training protocol, and call them out on it. Advise members NOT to take on duties assigned to other staff without prior approval.

The vindicated union member had a spotless disciplinary history, and witnesses to his actions which made AFSCME's defense easier. Even though the member's intention was to make life inside MDC safer, it does not change the fact that following a chain of command, and perhaps filing a grievance on facility safety, would've been the correct move. For the county's part, understanding the CBA and disciplining employees in a progressive manner can lead to a better run facility and come with big financial savings for taxpayers.

Arbitration Win: Albuquerque City Reinstates Member Terminated in 2014

Steward takeaway: CONTRACTS LIVE! Even after CBA expiration dates, contract language on discipline and grievance procedures remain in full force and effect.

At 6'6" and over 200 lbs, AFSCME Local 624 member Harrison Weil can drive a forklift, and he IS a forklift. 22 months after being terminated without just-cause, Brother Weil can get back to being just that, a one-man workin' machine.

AFSCME has won the arbitration and Weil will be reinstated, with back pay, as B-26 grade Warehouse Worker for the City of Albuquerque, Fire Department warehouse.

In late 2014, Weil, already a model four year employee of the city, had himself and his family dragged through a legal battle which a threatened his City Operator's Permit (COP) and employment. Weil maintained throughout that the ordeal that charges against him were fabricated, and in September of 2014, the charges were dropped.

So, what's the problem? Five months earlier, the City had terminated him without just cause, and in violation of the Union Contract, Section 24.3 "Process for Termination under COP" (City Operator's Permit). The article was negotiated by AFSCME and the City in 2007. Section 24.3 was included into the contract specifically to

give city employees a chance to vindicate themselves, without losing their jobs, after being charged with violating the law.

Section 24.3 allows the employer and employee who has been dispossessed of their COP to work together and reassign workloads for up to a year while the employee works to regain their license. In the case of the ABQ Fire Department Warehouse Department, modifying Weil's work duties caused practically zero disruption for day to day operations. Driving duties were the exception, only requiring a couple hours of on-call work per week. There were also four other employees at the warehouse to distribute the higher paid, on-call duties.

Safety, workload, and Weil's job performance weren't the driving factors which led management to push toward termination. Rather, it was the long, five year battle between AFSCME and the Berry Administration which had everything to do with the decision to force a termination.

In the Spring of 2014, the Berry administration's battle to impose their own, unfavorable version of the collective bargaining agreement was reaching its zenith. The city's argument to terminate Weil rested on their false belief that rules enshrined within the AFSCME collective bargaining agreement no longer applied, and

that the administration was free to interpret policy in any manner they saw fit.

AFSCME defended the rights of employees and specific contract language before the courts and a court appointed mediator through the fall of 2014. In the end, AFSCME prevailed, and did reach an agreement with the city where all existing language on grievances and discipline, including 24.3, remained intact.

BUT, once the city's legal wheels had been put in motion they couldn't be stopped. City decision makers did not settle the grievance with Weil or AFSCME, and an arbitration proved necessary.

Arbiter Goldman found that pursuant to section 24.3 of the collective bargaining agreement, the city should've assessed whether the essential functions of the job could be performed without Weil being able to drive on city business. Goldman found no evidence that productivity, or even morale, were impacted by the suspension of Weil's COP. Goldman determined that the city had insufficient evidence for terminating him prior to the one year accommodation afforded by 24.3.

In his order, Arbiter Goldman reinstates Weil to his former position with all appropriate retroactive pay, seniority, and accrued leave allowances.

Wins at Bernalillo County Youth Service Center Will Help Retain Staff

Steward takeaway: Make sure your employer isn't exploiting Fair Labor Standards Act and working employees off the clock.

When it comes to the perks of the job, Officers at Bernalillo County Youth Detention Center (BCYSC) count the upsides on only a few fingers.

Returning home safe at the end of the shift, connecting with youth who are succeeding in turning their lives around, and having a good pension to count on at the end of a physically and mentally challenging career; these are important elements of the officer career experience. But take-home pay at BCYSC is a factor preventing officers from being attracted to the job or staying with BCYSC.

That is why Bernalillo County Youth Detention Officers are celebrating two victories raising their take home pay. One is a four-year, 6.4% pay hike won through retirement cost shifting. On September 22, AFSCME Local 1536 and county management signed a Memorandum of Understanding to the master contract ensuring the employer will take on a larger portion of employee pension contributions. Currently, the county pays 2.36% of the employee contribution, a figure that will now rise to 8.76% over four years.

The second recent victory occurred when current and former Bernalillo County Youth Services Center employees reached a settlement with the county on an issue of unpaid hours stretching back years. Officers joined in a class action suit and litigated with the county over interpretation of Fair Labor Standards Act (FLSA) rules, contending they were misclassified and not paid for various types of pre-shift work

when in fact they should have been considered on the clock.

The settlement guarantees that employees will now be covered by applicable FLSA regulations and compensated at straight or overtime rates for the pre-shift work. Forty-six current and former officers are looking forward to their share of a \$160,000 settlement!

"These are good raises for our families," says Ben Chavez, Detention Officer and AFSCME Local 1536 President. "We already run a model, nationally recognized facility, and with these added pay incentives, we can better retain good officers, attract promising recruits, and have greater success in our mission to get these kids back, healthy and functioning in our communities."

"For the families that live paycheck to paycheck, winning these battles did a lot of good," said Marco Ortega, Chief Steward for Local 1536 and an 11 year officer at BCYSC. "We run a good facility and with these wins, we'll hang onto good officers."

Negative impacts caused by high turnover at BCYSC prevent the youth services center programs from running as smoothly as they could be. Financially, it costs the county upwards of \$75,000 to recruit and train new officers whose starting pay is \$13.32 an hour.

Career officers function as mentors to new recruits, and guide them through the highly charged juvenile detention environment. In the last three years, BCYSC has lost 30 newly trained officer recruits. Often the reason for leaving is that take home pay is higher elsewhere.

"That's tough," says Chavez. "Senior officers make a big investment in the

recruits beyond the financial costs. When you lose a officer who is just starting to hit their stride at a year or two, it disrupts the stability inside the center."

The Annie E. Casey Foundation has partnered with BCYSC on the Juvenile Detention Alternatives Initiative (JDAI) since 1999. JDAI helped BCYSC and facilities across the country develop a standard of practice for how the justice system handles the critical front end of the juvenile court process.

Currently, BCYSC is recognized as a "model facility" for the country by the JDAI. Juvenile detention administrators from across the country visit Bernalillo to learn how the best practices in place here are improving outcomes for incarcerated youth.

Local leaders say they're working to achieve pay parity with the other model facilities across the country.

"The take-home pay of an officer isn't something people have looked at, and said, 'wow, I can get rich here,'" says Chavez. "Even though there is a deeper significance that draws us to this work, we must have competitive pay. We're interacting with youth at pivotal moments of their lives, and when we do our jobs well, the entire community benefits."

Local vice-president Angel Garcia added, "we're still working to win contract language that ensures longevity pay and retention bonuses for officers at their first and second anniversary dates. This is one piece we need to begin shifting the tide on high turnover, it's the number one issue preventing BCYSC from reaching it's full potential as a highly effective juvenile detention center."

INFORMATION REQUESTS

The National Labor Relations Act (NLRA) and most state collective bargaining laws covering public-sector workers grant the union the right to information maintained by the employer that concerns a grievance or potential grievance. Make your information requests in writing, and include a date by which you would like a response. The union can make additional information requests based on material gained from the first request. Failure by management to supply information that is relevant to a grievance may be grounds for unfair labor practice charges. Examples of information you can request are:

- attendance records
- Material Safety Data Sheet
- correspondence (MSDS)
- discipline records
- payroll records
- performance evaluations
- inspection records
- personnel files
- job assignment records
- photographs
- job descriptions
- seniority lists
- management memos
- supervisor's notes

Grassroots Action at New Mexico State Psychiatric Hospital Wins Back Local Control for Shift Sharing

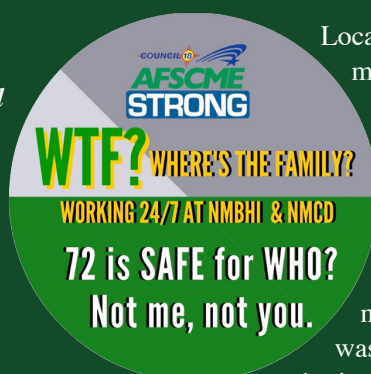
Grassroots Action at New Mexico State Psychiatric Hospital Wins Back Local Control for Shift Sharing

Leaders say there is a long way to go to address issues of O/T and safe staffing levels.

Steward Take-away: Grassroots action can be grease for a squeaky wheel, BUT big solutions require sustained political action

AFSCME Las Vegas Behavioral Health Institute (NMBHI) Local 1380 employees have taken action and demanded a plan of action from NM Department of Health (DOH) to address 30% vacancy levels at NMBHI and associated safety and client service concerns resulting from a regiment of crippling overtime.

Winning fair, competitive pay at NMBHI, and across most state agencies, is slow, and requires years of ongoing work at the Legislature and with the Governor's Office.



Local member action can, however, push management to the negotiations table and restore some regional control, allowing solutions to workplace problems quickly.

One factor which NM Department of Health had been unwilling to negotiate with AFSCME Local 1380 was the practice of shift sharing. Shift sharing allows employees to work a 12 hour shift, and realize 12 more hours a week for family life that was missing under the 72 hour work week. Without shift sharing, DOH has been maintaining strict eight-hour shift work, and employees were constantly being mandated to work double shifts.

The Department of Health met and negotiated a Memorandum of Understanding with AFSCME following the strong workplace action which included a petition, AFSCME members wearing stickers and handing out "Where's Mom?" flyers to illustrate how the current 72 hour workweek policy at NMBHI was harming working family well-being and client services.