



Protection Against Unfair Discipline

Sticking With Our Union: *In this series of short educational articles, AFSCME Florida discusses the strengths we have through constitutionally protected collective bargaining in Florida and what is at stake in making sure our contracts stay in place. To preserve your contract and voice for fair wages, benefits, job security, safe workplaces and retirement with respect and dignity, go to www.afscmefl.org/join to join your local and make sure your co-workers do the same.*

Union stewards, leaders and staff strive to solve workplace problems through an efficient system of give and take that ensures individual member's rights are balanced out with the common good of the collectively bargained contract.

We have all also seen incidents of poor management, abusive and bullying behavior and union members being unfairly accused or disciplined. We even know that sometimes our fellow workers fail to perform up to standards. It is in these incidents, whether based on personality conflict or larger issues of how a contract is interpreted, where informal problem-solving must be superseded with a formal legal process.

In 1964, Arbitrator Carroll Daugherty established a single standard to determine if the discipline or discharge of an employee can be upheld as a just cause action, known as Seven Tests of Just Cause.

Labor attorney Robert Schwartz describes the tests as follows:

- **Fair Notice:** Workers have to know of the rule they are accused of violating.
- **Prior Enforcement:** Management can't start suddenly enforcing a rule that has gone unenforced for a long time.
- **Due Process:** Management must conduct an interview or a hearing before issuing discipline, and can't increase the discipline after the fact.
- **Substantial Proof:** Discipline should be based on sound evidence, not rumors.
- **Equal Treatment:** Those committing the same offense should not receive "disparate treatment."
- **Progressive Discipline:** The employer should start with lesser penalties rather than moving immediately to suspension or firing.
- **Mitigating and Extenuating Circumstances:** Discipline must be proportional to the gravity of the offense, taking circumstances into account.

A fair grievance process that guarantees just cause for discipline is a basic of a union contract. Without a union contract, that protection and security will no longer exist.

