

# WEINGARTEN, GARRITY, AND LOUDERMILL

## IMPORTANT RIGHTS FOR YOU AND YOUR MEMBERS

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# WEINGARTEN

- ◆ Weingarten Rights stem from a 1975 U.S. Supreme Court decision in NLRB vs. Weingarten, Inc.
- ◆ The case involved a lunch counter employee who was questioned about the theft of some minor food items.
- ◆ Several times during the interview, the employee requested that she have a union representative called to attend the interview.
- ◆ The employer continually denied the employee's request to have her union representative present.
- ◆ The upset employee made a statement that the employer planned to use against her in disciplinary action.
- ◆ The employer continued its investigation into the matter and decided that it had erred and advised the employee that she was not to tell anyone about the interview.
- ◆ The employee immediately advised her union representative of the situation, and the union filed an ULP.



# Supreme Court Decision

- ◆ The Court eventually ruled that the employer violated the National Labor Relations Act when it denied union representation during an interrogation where the employee reasonably felt that disciplinary action could result.



## The Court's Decision

- ◆ The Court ruled that the Act states that “employees shall have the right...to engage in...concerted activities for the purpose of...mutual aid or protection.”
- ◆ It further ruled that the “denial of this right has a reasonable tendency to interfere with, restrain, and coerce employees in violation of ...the Act.



## Weingarten Right in Layman's Terms

- ◆ If during an interview or investigation, an employee feels that disciplinary action could result, s/he may request that a union representative be present to assist.
- ◆ If during an interview or investigation, an interviewer becomes aware that disciplinary action may be taken, s/he must inform the employee of that fact, and what s/he may be charged with.



# Employee Rights

- ◆ Employee can request that a representative be present during interview where s/he reasonably believes disciplinary action may result.
- ◆ Employer must advise the employee of the nature of the interview or investigation.
- ◆ The employee may speak privately with the union representative prior to participating in the interview.





# Union Representative Rights

- ◆ The union representative may assist the employee in understanding any question, and or part of the proceeding.
- ◆ The union representative may object to intimidating tactics, help the employee avoid fatal admissions or insubordinate outbursts, and insure that the interviewed gives an accurate account of the interview.
- ◆ The union representative may not answer the questions for the employee, but may offer assistance in how to appropriately answer.
- ◆ The union representative may caucus with the employee during the interview.



# If Employer Denies Union Representative

- ◆ The employee may “waive” right to union representation and participate in the interview.
- ◆ The employee can refuse to participate unless the union representative is allowed.
- ◆ Employer can cease interview and investigation upon employee’s refusal to participate without a union representative.
- ◆ Employer can continue investigation without interviewing the employee.





# Points To Remember

- ◆ An employer may attempt to intimidate an employee by threatening insubordination if the employee refuses to answer questions without the presence of a union representative.
  - The employee may refuse to answer questions pending the presence of a union representative.
- ◆ An employer is not obligated to advise an employee of his/her right to have a union representative present during an interview or interrogation.
  - It is incumbent upon the employee to exercise the Weingarten Right and to request a union representative be present before answering any questions during an interview that could lead to disciplinary action.



# The Weingarten Right

- ◆ I have reason to believe that what I may say during this interview could lead to disciplinary action against me, up to and including termination of employment.
- ◆ I request that my union representative be summoned and be present prior to my answering any questions.
- ◆ I request that the purpose and nature of this interview be disclosed to me prior to my answering any questions.
- ◆ If you do not allow my union representative to be present, I choose not to participate in this interview.



# Garrity Rights

- ◆ By invoking the Garrity rule, the officer is invoking his or her right against self incrimination. Any statements made after invoking Garrity, may only be used for department investigation purposes and not for criminal prosecution purposes.
- ◆ The Garrity Rule stems from the court case *Garrity v. New Jersey*, 385 U.S. 493 (1967), which was decided in 1966 by the United States Supreme Court. It was a traffic ticket fixing case of all things.



# Garrity Rights

- ◆ Garrity is a Supreme Court Decision that protects a member's statement during a departmental investigation from being used against him/her in a criminal investigation or proceeding.
- ◆ Garrity provides that reports or statements given in the departmental investigation can not be used against a person in any subsequent criminal proceeding.



## Two Prongs to Garrity

- ◆ If an officer is compelled to answer questions as a condition of employment, the officer's answers and the fruits of those answers may not be used against the officer in a subsequent criminal prosecution.
- ◆ The department becomes limited as to what they may ask. Such questions must be specifically, narrowly, and directly tailored to the officer's job.



# When To Invoke Garrity

- ◆ If an employee is being interviewed or interrogated and feels that anything s/he says could be used against him/her in a criminal proceeding.





## After Invoking Garrity

- ◆ The interviewer must suspend the interview and seek “Use Immunity” from the County Prosecutor.
- ◆ The the County Prosecutor grants “use immunity”, the department must advise the employee in writing.



## Points to Remember

- ◆ The Garrity Rule is not automatically triggered simply because questioning is taking place.
- ◆ The officer must announce that s/he wants the protections under Garrity.
- ◆ If a written statement is being taken from an officer, the officer should insist that the Garrity Warning actually be typed into the statement.
- ◆ Invoking Garrity does not mean that an employee may refuse an order to answer questions; s/he could still face charges for insubordination.



# Loudermill Rights

- ◆ In *Cleveland Board of Education v. Loudermill*, (1985), the Supreme Court held that employees with a property interest in their jobs are entitled to certain **due process rights** prior to termination. These rights include oral or written notice of the charges against them, an explanation of the employer's evidence, and an opportunity to be heard in response to the proposed action. *Loudermill* rights are applicable in instances when the employee may have a loss of pay, such as suspension, termination, or demotion.



# Loudermill Hearing

- ◆ This is also referred to as a pre-termination hearing.
- ◆ The purpose is basically to determine pay status pending disciplinary termination.



## Time Frames

- ◆ Employer has to serve charges on employee in writing.
- ◆ Loudermill hearing must be at least 24 hours after the service of the charges.
- ◆ After the hearing, the employee can be suspended; with or without pay, pending the outcome of formal disciplinary charges.



## Disciplinary Pending Criminal Charges

- ◆ In New Jersey, statutes dictate that conviction of crimes of the first, second, or third degree, and even fourth degree when it is in relation to one's employment, carry mandatory termination of employment.
- ◆ There is very little room for discretion.





## Major Disciplinary Pending Termination

- ◆ If employee is being charged with something that carries a sanction of removal, and circumstances warrant an immediate suspension, the Loudermill simply determines whether the employee will be suspended pending the outcome of the disciplinary appeal hearing, and whether the suspension will be with or without pay.



# Loudermill Hearing

- ◆ The employer can hold the Loudermill hearing in absence of the employee.
- ◆ The employer must put the Loudermill decision in writing, and provide a copy to the employee and union representative.