

# Disciplinary Rights in Action

Weingarten, Garrity, and Loudermill Rights  
Complaint vs Grievance



# Weingarten Rights

## **What are Weingarten Rights?**

- The right of a unionized employee to request union representation for any investigatory interview conducted by their employer, in which the employee has the reasonable belief that the discussion could lead to disciplinary action.

# Weingarten Rights

## History

- J. Weingarten, Inc., whose employees were represented by a labor union, was charged with an unfair labor practice by the National Labor Relations Board because the company denied union representation to an employee during an investigatory interview.
- The US Supreme Court held in *National Labor Relations Board v. J. Weingarten Inc.* (1975), that an employee has the right under Section 7 of the National Labor Relations Act to have union representation, when requested, at an investigatory interview, where the employee reasonably believes the investigation will result in disciplinary action.

# Weingarten Rights

## **Alaska - Adopted by the Alaska Labor Relations Agency (ALRA)**

- In a case (Munson v. State) involving a ASEA/AFSCME Local 52 member, the State was found to have committed an Unfair Labor Practice (ULP) and ordered to cease and desist in violating the Weingarten rights of our member as protected by Alaska Statute.
- In Decision & Order 206 (1996) the Agency found that, “By refusing an employee’s request for a Shop Steward at an investigative interview that the employee reasonably believes could result in discipline and by continuing the interview, an employer violates AS 23.40.110 (a)(1)”.

# Weingarten Rights

## Alaska ALRA Case

### **Four elements of the Weingarten right were discussed.**

- 1. The employee must first request union representation; the Employer does not have an obligation to inform the employee of the right.
- 2. The employee must reasonably believe that the interview will lead to discipline.
- 3. The representation may not interfere with legitimate employer interests. The Employer may respond to the request either by granting it or terminating the interview.
- 4. If a union representative does attend the interview, the Employer has no obligation to bargain with him or her.

# Garrity Rights

## **What are Garrity Rights?**

- The right of a public employee not to be compelled to incriminate themselves by their employer. Garrity Rights apply only to public employees because the government itself is their employer.
- Applies to Investigations by public employers about matters with potential criminal liability.
- Garrity Rights are comparable to Miranda rights for public employees.

# Garrity Rights

## History

- In the case of *Garrity v. New Jersey*, the U.S. Supreme Court determined that public employees could not be forced, under clear threat of discipline, to violate the principles of compulsory self-incrimination.

# Garrity Rights

## **Keep in mind**

- If you refuse to answer questions after you have been assured that your statements cannot be used against you in a subsequent criminal proceeding, the refusal to answer questions may lead to the imposition of discipline for insubordination.
- Further, while the statements you make may not be used against you in a subsequent criminal proceeding, they can still form the basis for discipline on the underlying work-related charge.
- When in doubt, assert your Garrity Rights are being recognized.



# Loudermill Rights

## **What are Loudermill Rights?**

- Employees are entitled to due process rights prior to termination.
- Generally, these rights require the public employer to offer a pre-disciplinary meeting with the affected employee; at this meeting, the employer presents their grounds for discipline, and the employee is given the opportunity to respond.
- Loudermill Rights are applicable in instances when the employee may have a loss of pay, such as suspension, termination, or demotion.
- Like Garrity Rights, these rights only apply to public employees because the government itself is their employer, and the Constitution only applies to actions taken by the government.

# Loudermill Rights

## History

- In 1979, the Cleveland Board of Education hired James Loudermill and would later dismiss him after discovering an error on his application, without giving him a chance to respond or challenge his dismissal.
- The US Supreme Court would later decide in *Cleveland Board of Education v. Loudermill* (1985) that “...*Due Process Clause provides that certain substantive rights – life, liberty, and property – cannot be deprived except pursuant to constitutionally adequate procedures... The right to due process is conferred, not by legislative grace, but by constitutional guarantee.*”

# Loudermill Rights

## **Keep in mind**

- Pre-disciplinary meetings require prior notice.
- Once the meeting is held and an initial discipline is determined, the employer must put the decision in writing, and provide a copy to the employee and union representative.
- The employer can hold the pre-disciplinary meeting in absence of the employee. Although notice must be given, meeting avoidance does not require the employer to delay the hearing.

## Scenario where all three rights coexist

- A public employee is called to their supervisor's office for questioning. Having a reasonable belief that the questioning is an interview for determining possible discipline, the employee invokes his/her **Weingarten Rights** and requests union representation.
- The Business Agent arrives, and it becomes clear that the investigation involves potentially criminal liability. The Business Agent and the employee secure an affirmation from the supervisor stating that the questioning is for disciplinary purposes only, that the employees' answers will not be used in a criminal proceeding, and that failure to answer will result in termination. Now, the employee is protected by their **Garrity Rights**.
- A few days later, the employee receives notice that management wishes to meet again, and that they believe they have grounds for terminating the employee for misconduct based on the employee's answers provided at the investigatory interview. The notification states that at this meeting, management will explain why they think they have grounds for termination, and the employee will have the opportunity to respond. These steps satisfy the employee's **Loudermill Rights**.

# Complaint vs Grievance

What's the difference?



# Complaint

## Article 15.01A Individual Complaints

A Complaint is defined as: (1) any controversy, dispute or disagreement arising between the Union or an employee(s) and the Employer that does not concern the application or interpretation of the terms of this agreement, or (2) is the appeal of the discharge, demotion or suspension of a probationary employee not holding permanent status in another classification or (3) is a controversy, dispute or disagreement with respect to long-term nonpermanent employment.

# Complaint

## Examples

- Dignity Clause (Art 6.03) violation (Hostile Work Environment)
- Appealing employee non-retention during initial probationary period
- Any dispute regarding long-term nonpermanent employees
- Others?

# Grievance

## Article 16.01A Procedure

A grievance shall be defined as any controversy or dispute involving the application or interpretation of the terms of this Agreement arising between the Union or an employee or employees and the Employer.



# Grievance

## Examples

- Challenge to Notice of Pay Problem (NOPP) response
- Contesting Discipline as a violation of Just Cause
- SOA not abiding by Division of Labor Standards and Safety regulations.
- Others?