A Trio of “Rights” from Court Decisions

- **Garrity Rights**
- **Weingarten-like Rights to Representation**
- **Loudermill Rights**

Garrity Rights

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.

This decision established what have come to be called "Garrity Rights" for public employees.

The Garrity rule is similar to Miranda rights for public employees. However, the burden is on the employee to assert their Garrity rights. These rights can and should be asserted whenever an employee believes they are being investigated for possible criminal conduct.

Garrity

If, however, 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 thereafter 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.

To ensure that your Garrity rights are protected, you should ask the following questions:

Garrity

1) If I refuse to talk, can I be disciplined for the refusal?
2) Can that discipline include termination from employment?
3) Are my answers for internal and administrative purposes only and are not to be used for criminal prosecution?

- Once an employee has asserted their Garrity rights, management must:
- Give a **direct order** to answer the question;
  Make the question **specific, directly and narrowly related** to the employee's duty or fitness for duty;
  Advise the employee that the **answers will not and cannot be used against him/her in a criminal proceeding, nor the fruits of those proceedings**; and
  Allow **union representation** if the employee also asserts their Weingarten Rights.

Weingarten-like Rights to Representation

- These rights are generally called "Weingarten Rights" based on a 1975 Supreme Court decision (NLRB vs. J. Weingarten). As with all rights, if we do not use them we lose them. Since much of New Mexico Public Employee Collective Bargaining Act is based on NLRB precedent, we believe NM public employees who can legally be represented by a union, whether or not in an actual recognized bargaining unit, (although no court has ruled) have similar rights under NM PEBA
- **This statement could save your job:**

"If this discussion could in any way lead to my being disciplined or terminated I respectfully request that my representative be present at the meeting. Without representation present, I choose not to respond to any questions or statements."

Weingarten-like Rights to Representation

- If you are ever called into an interview meeting with your supervisor or manager so they can investigate a situation which might result in discipline, you have specific representational rights. These rights are summarized below:
- You have the right to have a Union Representative present.
- If you want a representative there, you must ask for him or her.
- If you do not know why your manager wants to meet with you, ask him/her if it is a meeting that could result in a discipline.

Weingarten-like Rights to Representation

- If your manager refuses to allow you to bring a representative, repeat your request in front of a witness. Do not refuse to attend the meeting, but do not answer any questions either. Take notes. Once the meeting is over call your representative at once.

- You have the right to speak privately with your representative before the meeting and during the meeting.
- Your representative has the right to play an active role in the meeting. She or he is not just witness.

Weingarten-like Rights to Representation

What situations DO NOT give rise to Weingarten rights?

- Where the meeting or discussion is merely for the purpose of conveying work instructions, training, or needed corrections.
- Where the purpose of the meeting is simply to inform the employee about a disciplinary decision that has already been made and no information is sought from the employee.
- Where the employer has clearly and overtly assured the employee prior to the interview that no discipline or adverse consequences will result from the interview.
- Where any discussion that occurs after the employer has notified the employee of the discipline has been initiated by the employee rather than the employer.

Loudermill Rights

- A U.S. Supreme Court decision somewhat similar to Weingarten occurred in 1985, with the case of Cleveland Board of Education v. Loudermill**.** This decision established what have come to be called "Loudermill Rights" for public employees.
- Loudermill Rights apply to incidents of **involuntary termination**.
- Prior to being terminated, "the . . . tenured public employee is entitled to oral or written notice of the charges against him (or her), an explanation of the employer's evidence, and an opportunity to present his (or her) side of the story."

Loudermill

- Unlike Weingarten, the **employer has an obligation** to inform the employee of his/her Loudermill Rights.
- The **employee has the right** to speak or not to speak at the Loudermill (or "pre-disciplinary") hearing. Also, the employee has a right to union representation, and the union representative may speak on behalf of the employee.
- If the employee chooses not to attend the *Loudermill* (or "pre-disciplinary") hearing, the employer may proceed with termination