

# DISCIPLINE

- Wild West with Police Reform – lots of unknowns
- Often it is a CBA issue – know your contract
- Does it have Just Cause for Discipline prov?
- Can you grieve discipline – read whole CBA
- Union has dual role – rep during investigation and then rep during appeal

# JUST CAUSE FOR DISCIPLINE

## Seven Tests for Just Cause

1. Was the employee adequately warned of the consequences of his conduct? The warning may be given orally or in printed form. An exception may be made for certain conduct such as insubordination, drinking on the job or coming to work drunk or on drugs.
2. Was the employer's rule reasonably related to efficient and safe operations?
3. Did management investigate before administering discipline? Investigation should be made before administering discipline. When immediate action is necessary, the best course is to suspend the employee pending the investigation.
4. Was the investigation fair and objective?
5. Did the investigation produce substantial evidence of guilt?
6. Were the rules orders and penalties applied evenhandedly?
7. Was the penalty reasonably related to the seriousness of the offense and the employee's past record?

# RIGHTS IN THE DISCIPLINARY PROCESS

## WEINGARTEN RIGHTS

Right to representation during the disciplinary interview.

## GARRITY RIGHTS

Right to be free from compulsory self-incrimination.

# WEINGARTEN

- DECIDED UNDER NLRB – SEC. 7 OF NLRB PROVIDES RIGHT TO “ENGAGE IN OTHER CONCERTED ACTIVITIES FOR COLLECTIVE BARGAINING PURPOSES.”
- EMPLOYEES HAVE THE RIGHT TO HAVE A UNION REPRESENTATIVE DURING DISCIPLINARY INTERVIEWS BY THE EMPLOYER.
- LEVEL THE PLAYING FIELD – IMBALANCE OF POWER BETWEEN LABOR AND MANAGEMENT.

# BASIC WEINGARTEN RIGHTS

- Employee must reasonably believe that the interview will result in disciplinary action.
- Right only exists where the employer is eliciting information from the employee – even in written form.
- Employee must ask for the right – employer does not have to inform employee of the right.

# ONCE THE RIGHT IS INVOKED

## EMPLOYER HAS 3 CHOICES

1. Grant the request.
2. Dispense with or discontinue the interview.
3. Offer the employee the choice of continuing the interview unaccompanied by a union representative or having no interview at all and thereby dispensing with any benefits that the interview might have conferred on the employee.

# WHO MAY SERVE AS REP.

UNION PICKS THE REP. – NOT THE EMPLOYER OR EMPLOYEE.

NO RIGHT TO PRIVATE ATTORNEY. The goal behind this rule is to entitle employees to mutual aid and comfort from the union and its members. A private attorney would be there to protect the personal interests of one member, and not the whole unit.

CAN BE THE UNION ATTORNEY

WAIT/CHOICE CAN'T UNDULY INTERFERE WITH EMPLOYER'S LEGITIMATE NEEDS

# ROLE OF REP.

## MUCH LITIGATION OVER THE ROLE OF THE REPRESENTATIVE

1. RIGHT TO CONSULT WITH EMPLOYEE PRIOR TO THE INTERVIEW
2. RIGHT TO DETERMINE NATURE OF CHARGES BEFORE THE INTERVIEW
3. RIGHT TO PRIVATELY CONSULT WITH EMPLOYEE DURING THE INTERVIEW
4. RIGHT TO OFFER INVESTIGATORY LEADS
5. RIGHT TO OFFER MITIGATING CIRCUMSTANCES



# REP. HAS ONLY LIMITED “PRIVILEGE”

- STATEMENTS MADE TO REP. FOR PURPOSE OF UNION REPRESENTATION ARE PRIVILEGED FROM DISCLOSURE TO EMPLOYER
- BUT NOT THE REST OF THE WORLD  
GRAND JURY  
CRIMINAL TRIAL  
CIVIL MATTERS

# WEINGARTEN

- **Important Function of the Representative – Record Everything**
- Take great and detailed notes
- In addition to attempting to clarify and provide helpful information, the rep. must take detailed and accurate notes of all things said, people present, times, dates, etc. This is often the only record of the interview, other than the management version.
- Memories fade – be sure to take notes and make reports at the time of the interview.
- **5 MINUTE RULE!**

# VIOLATIONS OF WEINGARTEN

PUT VIOLATION ON RECORD – REQUEST REP. IN WRITING

MUST PROCEED IF ORDERED

VIOLATION IS A ULP – BUT MAY SIMPLY BE PART OF “JUST CAUSE” ANALYSIS

REMEDY SHOULD BE TO REVERSE ANY DISCIPLINE IMPOSED AS A RESULT OF THE INTERVIEW.

# WEINGARTEN OVERVIEW

- **Ask for Representation.** Management is not required to inform the employee of his/her Weingarten rights; it is the employee's responsibility to know and request.
- **When does it apply?** You are entitled to Union Representation when you are called to an investigative interview which you reasonably believe will result in discipline AND when a valid request for a representative is made – you need both.
- **When the employee makes the request for a union representative to be present, management has three options:** (1) It can stop questioning until the representative arrives; (2) It can call off the interview; or (3) It can tell the employee that it will call off the interview unless the employee voluntarily gives up his/her rights to a union representative (an option the employee should always refuse.)
- **Member must go to the interview.** If you receive an order to appear for questioning, and the questions have not yet been presented, you must go. When the subject of the questioning is presented, you should immediately ask for a representative.
- **Always request a rep. before hand.** If denied, you should still go to the interview, and again request a representative. If the interview is being recorded, state your reasons for the request (state all reasons you believe the interview may result in discipline).
- **Put everything on the record.** If the interview is recorded, make sure you make your request for representation on the record – if denied a representative, put that on the record as well. If not recorded, put it in writing and request that it be included in the record.
- **Who can be your Rep.?** A member of the Unit, a Business Agent of the Union, or the Union Attorney.
- **Rep. cannot be told to remain silent.** Reps. have an active role to play – speak privately with the member before the interview, learn the subject matter of the interview from management, clarify questions, give advice and counsel, add information.
- **The Rep. should take great notes.** Be sure to write down everything that happens – what was said, who was present, time, date, etc.

# GARRITY RIGHTS

- Garrity v. New Jersey, 385 U.S. 493 (1967)  
(Officers questioned about ticket fixing).
- Statements given under threat of discharge from public employment are compelled and may not be used in subsequent criminal proceedings.
- MASSACHUSETTS – Carney Immunity also – right to transactional immunity if compelled – no prosecution where granted.

# GARRITY RIGHTS

## BASIC GIST

1. ORDER TO ANSWER UNDER THREAT OF DISMISSAL
2. ASK NARROW AND SPECIFIC QUESTIONS RELATED TO DUTIES OR FITNESS FOR DUTY
3. ADVISE ANSWERS WILL NOT BE USED AGAINST HIM IN CRIMINAL PROCEEDING.

THEN OFFICER CAN BE DISCIPLINED FOR FAILURE TO ANSWER QUESTIONS.

AND ANSWERS MAY NOT BE USED AGAINST HIM IN CRIMINAL PROSECUTION. USE IMMUNITY AND DERIVATIVE USE IMMUNITY.

# Discipline Imposed?

- Treat like all cases – forms, investigate, good notes, create file, grievance committee involved
- If right to grieve – start process
- If none – advise member – may have to pursue civil service appeal
- Involve NEPBA Rep early – deadlines important
- Involve counsel if criminal implications – privileges to refuse questioning