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THE RIGHTS OF EMPLOYEES TO A FAIR PREDISCIPLINARY PROCESS: PART XI – WHETHER AN EMPLOYEE MAY COMPEL THE ISSUANCE OF A GARRITY ORDER.

In the previous articles in this series we have discussed the ability of employers to pursue internal investigations by means of compelled interviews. In this article we consider the flip side of that issue – are there occasions where the employee may require a Garrity order to be issued so as to simultaneously participate in the internal investigation while acquiring *Garrity* immunity.

Typically, a *Garrity* order is part and parcel of any formal internal investigation. On the other hand, once an employer has acquired the employee's statement and has decided to sustain charges, the question sometimes arises as to the ability of an employee to provide an immunized statement at a *Loudermill* hearing. (The *Loudermill* requirement will be discussed later in this series.)

The courts that have reviewed this question have deemed the *Loudermill* process to be voluntary and have held that there is nothing that requires an employer to provide a *Garrity* order in order to fulfill the mandate of the *Loudermill* case. Therefore, employees who

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participate in a *Loudermill* hearing, while at the same time a cloud of a criminal charge hangs overhead, proceed at their own risk. It may be more prudent for the employee to have others, such as a union representative or an attorney, speak on their behalf.

Another question which may arise, but which the case law has yet to resolve, is what happens when an employer proceeds through an investigation but never provides any “order” for an employer to give a statement. Certainly, this process would be challenged as a violation of “just cause” principle given the employer’s obligation to acquire all relevant information before making a disciplinary decision. It is clear that a *Loudermill* hearing is voluntary on the employee’s part, but the burden of conducting the *initial* internal investigation rests on the employer and it is not clear that the employer may waive that obligation by simply advising the employee that their participation is voluntary and that no *Garrity* order will be provided.

This article completes our discussion of the *Garrity* rule. In the next article we will the legality of certain investigatory tactics.

To learn more about *Garrity* rights and the other rights of public safety employees visit the Cline and Associates website where you can order our book “THE RIGHTS OF WASHINGTON PUBLIC SAFETY EMPLOYEE: REPRESENTATIVE’S MANUAL.” This book is a 468 page compendium of labor law materials written especially for those involved in union-side representation of Washington public safety labor organizations.

Jim Cline

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