

# **CARRIER RIGHTS DURING INVESTIGATIONS BY INSPECTION SERVICE OR OFFICE OF INSPECTOR GENERAL (OIG)**

## **Weingarten Rights**

A 1975 Supreme Court decision (NLRB v. J. Weingarten, Inc.) provides that a union-represented employee has the right to a steward when facing an investigatory interview. The important thing to remember about your "Weingarten Rights" is that **management does not have to notify you of this right: The employee is responsible for being aware of the right to request representation.**

Under the Weingarten decision, the employee can request union representation before or at any time during the interview. The employer then has three options: (1) Grant the request and delay questioning until the union representative arrives; (2) Deny the request and end the interview immediately; or (3) Give the employee a choice of ending the interview or continuing the interview without representation.

If the employer denies the request for representation, the employee can simply refuse to answer questions.

## **Miranda Rights**

You have the right to remain silent. A historic Supreme Court ruling (Miranda v. Arizona, 1966) holds that not only must a law enforcement officer advise an individual of certain rights, the officer must be sure that these rights are understood.

Before being questioned by a postal inspector or OIG agent, you must be told: (1) you have the right to remain silent; (2) anything you say can be used against you in court; (3) you have the right to talk to a lawyer before being asked any questions, and to have a lawyer with you during questioning (and if you cannot afford a lawyer, one will be appointed); (4) even if you choose to answer questions without a lawyer present, you have the right to stop at any time.

Finally, the Miranda decision holds that you must be asked: "Do you understand the rights that have been read to you?"

## **Garrity Rights**

The Fifth Amendment provides that no one in a criminal case can be forced to be a witness against him- or herself. Information obtained through coercion is not admissible in court. In addition to these basic Fifth Amendment rights, Postal Service employees have additional rights because of their "public sector" status. In the public sector, the government acts as both law enforcement agency and employer.

The Garrity Rights were developed through a series of Supreme Court rulings dating back nearly 40 years. In a 1967 ruling (Garrity v. New Jersey), several New Jersey police officers who were targeted in a ticket-fixing investigation were told to respond to questions or face discharge for insubordination.

To save their jobs, the officers complied and their statements were then used in criminal prosecutions against them. The highest court overturned the convictions, citing a violation of Fifth Amendment rights.

This case now stands for the principle that using the threat of discharge or other substantial economic penalty against public-sector employees is coercive – that any consequent disclosure is inadmissible in a criminal trial.

## **Kalkines Warning**

The Garrity decision does not, however, mean that the government may never threaten an employee with discipline for refusing to give a statement about potentially criminal acts. In Gardner v. Broderick (1968), the U.S. Supreme Court noted that the government could discipline an employee if it does not force the employee to give up his Fifth Amendment rights, such as by giving the employee prosecutorial immunity (a guarantee that the information disclosed will not be used against the employee in a criminal prosecution).

In Kalkines v. United States (1973), the U.S. Court of Claims elaborated on the Supreme Court's holdings, finding that an employee can be asked to "answer pertinent questions about the performance of an employee's duties ... when that employee is duly advised of his options to answer under the immunity granted or remain silent and face dismissal." In other words, if an employee is given immunity, but nonetheless decides not to answer questions, the government may discipline the employee for not answering the questions. In the Postal Service, any such discipline is, of course, subject to the grievance procedure.

The Kalkines ruling is an attempt to balance the Fifth Amendment's right against self-incrimination with the Supreme Court's holding that the government has the right to have its employees answer questions about the performance of their official duties. In getting this information from employees, according to Kalkines, the Fifth Amendment is not violated so long as the government also grants the employee immunity from prosecution based upon that information.

**Kalkines trumps Garrity if the subject is given immunity. Get immunity offer in writing before answering any questions. NEVER go it alone, ALWAYS demand Union representation.**