

Your Basic Rights as a Union Member

Basic Union Member Rights

Remember that employees have Weingarten rights only during investigatory interviews, which occur when a supervisor questions an employee to obtain information which *could be used* as a basis for discipline, or asks an employee to defend his/her conduct.

Also, remember that if an employee has a *reasonable belief* that discipline or other adverse consequences may result from what s/he says, the employee has a right to request Union Representation. Investigatory interviews often relate to subjects such as:

- Absenteeism
- Accidents
- Damage to company property
- Drinking or drugs
- Fighting
- Falsification of records
- Insubordination
- Tardiness
- Theft
- Work Performance
- Violation of safety rules

When a supervisor calls an employee to the office to issue a warning or other discipline, this is not part of the investigation, and the employee is not entitled to union representation. The supervisor is announcing a decision and not questioning the employee.

In Hennepin County, we have several Locals – often two or more at one site, such as the Work House or the Government Center.

Stewards from another Local can be called in to sit with an employee during an investigatory interview, if no one from your Local is available. If a grievable action results, however, your own Local will carry forward on your behalf.

Tennessee Warning (Minnesota Statutes, section 13.04, subdivision 2):

The Tennessee Warning informs employees of their rights under the Minnesota Government Data Practices Act.

At this time you are about to be asked to supply private or confidential information about yourself or others. Before supplying such information, you are hereby informed of the following conditions:

A. The purpose of this information is to conduct an investigation of alleged employee misconduct and to use such information in determining if such misconduct did in fact occur, and if so, what, if any, disciplinary or remedial action should be taken.

B. You are advised that you are legally required to supply the requested information as part of your employment responsibilities.

C. You are advised that as a consequence arising from the supplying of this information, you may be required to testify at subsequent hearings; and/or the data which you provide may be used to take disciplinary or remedial action as a result of such a proceeding. You are also advised that as a consequence arising from the refusal to supply information, you may be subject to disciplinary action.

D. You are advised that the following persons or entities may be authorized by law to receive this data:

- Involved Supervisors and Administrators**
- Labor Union Representatives**
- Arbitrators and Administrative Hearing Examiners**
- Law Enforcement Agencies**
- State and Federal Courts**
- Human Rights Agencies**
- Your Authorized Representative**
- Minnesota Departments of Employment and Economic Development, Labor and Industry and Employee Relations**

In 2003, the Minnesota Department of Employee Relations sent out a memo concerning the used of Tennessee and Garrity Warnings in misconduct investigations: Recently a county attorney's office declined to prosecute two cases referred by State agencies. The Tennessee warnings used in these cases stated a penalty in the form of

disciplinary action to the subject employees for failure to answer the investigators' questions. The county attorney determined that these Tennessee warnings had deprived the employees of their Fifth Amendment rights under the U.S. Constitution, because the threat of disciplinary action constituted leverage to coerce the employee to self-incriminate. Therefore, the information obtained in the investigative interviews could not be used in the employees' criminal prosecution.

Weingarten Rights: Employees have Weingarten Rights (the right to Union Representation during investigations) only during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information that could be used as a basis for discipline – or asks an employee to defend his/her conduct. If the employee has a reasonable belief that discipline or other adverse consequences may result from what's said, the employee has a right to request union representation. Not all management-employee discussions constitute investigatory interviews – routine conversations and instructions for doing the job fall into this area. However, if a supervisory-employee conversation changes toward investigating performances or situations, employees should ask for union representation before continuing.

When a supervisor calls an employee into the office to issue a warning or other discipline, this is no longer part of the investigation, and the employee is not permitted union representation, unless invited by management. If questions are asked to develop support for the decision, however, the meeting may be transformed into an investigatory interview, at which representation should be present.

Stewards play three roles during employer investigations:

- 1) to represent and provide advice**
 - 2) to be an advocate for the employee during the investigation**
 - 3) to monitor the employer's investigation**
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Garrity Warning: The Garrity ruling fundamentally addressed evidentiary issues with regard to criminal proceedings. The case involved police officers who were being investigated for alleged fixing of traffic tickets. During the investigation the officers were told that anything they said might be used against them in any state criminal proceeding and they had the privilege to refuse to answer if the disclosure would tend to incriminate them, but if they refused to answer they would be subject to removal from office. In summary, the court held that a later prosecution cannot constitutionally use statements (or their fruits) coerced from the employee by a threat of removal from office if he/she fails to answer the question.

A Garrity warning waives the government's right to discipline an employee for remaining silent, but preserves its right to use any statement the employee voluntarily

makes against him/her in a subsequent criminal prosecution. Notably absent is information about an employee's Weingarten Rights. Despite all the warnings and legal language, employees still have a right to union representation. Employees need to remember that despite assurances that any information will not be used against them in a criminal proceeding; there are no assurances that the information will not be used against them in administrative or disciplinary proceedings.

Garrity Warning Public Employees Only: A warning given to an employee by an employer during an employment investigation that requires the employee to either provide information or be discharged for refusing to provide information. If such a warning is given, the employee may object to the use of such information in a subsequent criminal proceeding on the basis that a self-incriminating statement was made under duress.

Sample Garrity Warning:

I wish to advise you are being questioned as part of an official investigation of your employer. You will be asked questions specifically, directly and narrowly related to performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the law and the Constitution of the United States, including the right not to be compelled to incriminate yourself. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties or fitness for duty, you could be subject to discharge. If you do answer, neither your statement, nor any information or evidence which is gained by reason of such statement, can be used against you in any subsequent criminal proceedings. However, these statements may be used against you in relation to subsequent discipline.

_____ (Date)

_____ (Employer Signature)

_____ (Employee Signature)