

The Garrity Rule

By Leonard D. Williams, Staff Attorney, March 2013

Whenever a school system receives a credible allegation of misconduct by an employee, it has a duty to investigate. If and when a public school employee is questioned by his superiors about a matter that could implicate him in a crime, he should exercise his Garrity rights.

The Garrity rule (also known as the Garrity warning, Garrity advisement or Garrity rights) arises out of *Garrity v. New Jersey*, a U.S. Supreme Court case involving New Jersey police officers who were directed to either answer questions that could've subjected them to criminal prosecutions or lose their jobs. The officers were essentially forced to incriminate themselves or be removed from office. The Court found that to be unconstitutional. In short, under the Garrity rule, a public employee has the right to be silent if any statements he is compelled to provide to his employer could be used against him in a subsequent criminal proceeding.

What does this mean for a public schools system? If an employee is ordered, under the threat of termination or other disciplinary action, to answer questions which could result in criminal charges being brought against him, he has the right to assert his Garrity rights. Once the employee requests those protections, the system must then decide to either:

- 1) Compel the employee to answer specific, narrowly drawn questions related to his job. Statements derived from those questions can not be used against him in a criminal prosecution; or
- 2) Allow the employee to voluntarily answer questions. Any statements he chooses to make can be used against him in a criminal proceeding; or
- 3) End the interview.

It is important to reiterate that the Garrity rule applies only to questions whose answers might implicate the public employee in *criminal* activity. It can not be used if one is under investigation for a non-criminal allegation or there is no risk of a criminal prosecution. Furthermore, any statements the employee provides, whether compelled or volunteered, may be used against him by his employer or in any civil proceeding (e.g. an ethics investigation by the Professional Standards Commission).

Keys regarding the Garrity rule:

- 1) The employee should ask if he's being directed to answer questions;
- 2) If he is, the employee should ask if he'll be disciplined should he not answer those questions;
- 3) If he will, the employee should specifically and clearly state that he wishes to invoke the Garrity rule;
- 4) If the system and employee reach an agreement on a Garrity warning, the employee should ask for it in writing and keep a copy; and

- 5) Before answering any questions, the employee should read that written Garrity advisory closely. It may indicate that he is required to answer questions, in which case the answers can not be used against him in a criminal prosecution. Conversely, it could state that he does not have to answer questions, in which case any voluntary statements may be used against him in a criminal prosecution. The advisory could read either way so it's imperative to have a clear understanding of its meaning.

If one learns he's under investigation for an alleged criminal act, he should consult an attorney at the earliest opportunity, preferably before making any statements.

For more information, please contact the PAGE Legal Department.