

Garrity and Kalkines warnings

With the recent addition of these terms into the vocabulary of union activists comes the need to understand how they may affect letter carriers. In order to assist the activist to understand the application of these warnings, the differences between the two are outlined here. This article also supplements the information provided in the May 2005 Contract Talk article.

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.

The Kalkines ruling addressed a situation in which an employee was being investigated for bribery and refused to answer questions based on his Fifth Amendment rights. In summary, the court held that, "In recent years the courts have given more precise content to the obligations of a public employee to answer his employer's work-related questions...where, as here, there is a substantial risk that the employee may be subject to prosecution for actions connected with the subject of management's inquiry. It is now settled that the individual cannot be discharged simply because he invokes his Fifth Amendment...in refusing to respond.... But a governmental employer is not wholly barred from insisting that relevant information be given; the public servant can be removed for not replying if he is adequately informed both that he is subject to discharge for not answering and that his replies (and their fruits) cannot be employed against him in a criminal case."

The Garrity and Kalkines warnings serve somewhat different purposes. 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. A Kalkines warning waives the government's right to use voluntary statements in a criminal prosecution, but preserves its right to discipline an employee for refusing to cooperate in the investigation.

In order to conduct investigations that do not run afoul of Garrity and Kalkines the inspector general (OIG) provides information to those employees they plan to interview. A Garrity warning typically contains the following (sample) information:

You have the right to remain silent if your answers may tend to incriminate you. Anything you say or do may be used as evidence in both an administrative proceeding, and any future criminal proceedings involving you. If you refuse to answer the questions posed to you on the grounds that the answers may tend to incriminate you, you cannot be discharged solely for remaining silent. However, your silence can be considered in an administrative proceeding for its evidentiary value that is warranted by the facts surrounding your case. This interview is strictly voluntary and you may leave at any time.

A Kalkines warning typically contains the following (sample) information:

You are going to be asked a number of specific questions concerning the performance of your official duties as an employee of the United States Postal Service. You have a duty to reply to these questions, and agency disciplinary proceedings resulting in your discharge, may be initiated as a result of your answers. However, neither your answers nor any information or evidence which is gained by reason of such statements can be used against you in criminal proceedings. You are subject to disciplinary actions up to and including dismissal if you refuse to answer or fail to respond truthfully and fully to any questions.

Notably absent in both warnings 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.

Branch officers and stewards should not play the role of criminal lawyer. If a letter carrier is directed to participate in an OIG interview, and there is reason to believe that the carrier may be subject to criminal prosecution, advise the individual to consult an attorney immediately. ☒