**Garrity & Loudermill**

**Public Employees’ Rights**

**1. Garrity Rights:**

* The Supreme Court held that a public employee may be compelled to give statements under threat of discharge but that it would be unconstitutional to use those statements in the criminal prosecution of the employee.
* The employee must be advised, but should verify with the employer, that answers to the questions will not be used against them in criminal proceedings (as opposed to department action such as a violation of work rules).
* Before the meeting, the steward, staff representative and employee should ask if the investigation is administrative or criminal.
* If the employer says the matter is criminal, or during an investigatory or fact finding meeting it becomes clear it involves a potential criminal misconduct, the steward should get affirmation from management that the investigation is administrative and for disciplinary purposes only.
* The employee should then invoke Garrity by asking, “Am I being ordered to answer questions as part of my employment with the agency?”
* An employee may not refuse to answer specific, direct, and narrow job-related questions as long as the employer does not compel a waiver of constitutional rights.
* If it appears there is a potential criminal issue, employees should immediately seek legal advice.

**2. Loudermill Hearing:**

* If the employer decides that they will discipline the employee AND the employee will suffer an economic loss from the proposed discipline (suspension, demotion or termination), the employee has a right to a pre-disciplinary, “Loudermill” meeting or hearing.
* This is the opportunity for the employee and their union representative to present arguments about why the employee should not be disciplined or not be disciplined as severely.
* Following the Loudermill meeting, the employer will decide if they are going to continue with the discipline, drop the discipline, or give a lower level of discipline.