Garrity Rule

The Seventh Circuit Court of Appeals in Chicago has jurisdiction over Indiana. Recently it decided a case involving an Illinois park district employee who had been investigated by her public employer and by police authorities in regard to misuse of funds. The Seventh Circuit gave a clear statement of the Garrity Rule. The court ruled that:

"A government is not allowed to force a person to make a statement, even out of court, that might be used as evidence that he had committed a crime. It is not even allowed to pressure him into cooperating by threatening to fire him (if he is a government employee) for his refusing to provide such evidence.   . . .It has every right to investigate allegations of misconduct, including criminal misconduct by its employees, and even to force them to answer questions pertinent to the investigation, but if it does that it must give them immunity from criminal prosecution on the basis of their answers."

The Seventh Circuit Court of Appeals has added a protective gloss to the Garrity Rule, which does not apply in other parts of the country. The court has held for several years that a government employer, like a school board, who wants to ask an employee potentially incriminating questions must first warn him that because of the immunity to which the cases entitle him, the employee may not refuse to answer the questions on the ground that the answers may incriminate him.

In other words, the employee cannot be fired for insubordination for refusing to answer the employer's question, unless the employer has first warned him that the information he provides cannot be used in a criminal prosecution.

The Seventh Circuit Court of Appeals refers to this as an "anti-mouse trapping rule." Uncounseled persons are much more likely to know about their Fifth Amendment right not to incriminate themselves than they are to know about the Garrity Rule. If they try to assert their Fifth Amendment rights, and are not warned by the employer of their Garrity Rights, they cannot be fired for insubordination.

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