

Selected issues concerning the impact of criminal law on the discipline of the public employee



Sometimes public employees can be involved in situations where they can be criminally prosecuted, as well as punished by their employer, for their actions. For example, in cases involving theft, assault and patient or inmate abuse, a person can be disciplined by their employer and be punished through the criminal court system.

The two systems, criminal court and administrative action by the employer, are distinct and separate. They have different procedures and have different standards for proving innocence or guilt.

This leaflet is intended to give guidance regarding situations that happen at work that could potentially carry two separate penalties -- one from the employer and one from the criminal court system. However, it should be emphasized that OCSEA's expertise lies in protecting employee rights not criminal law. As a result, if a person is involved in an action with a potential criminal penalty, he/she should contact an attorney experienced in criminal law.

Ohio Highway Patrol Investigations

Any time the police or the Ohio Highway Patrol (OHP) are involved, there is a potential for criminal action. Because stewards are not responsible, nor trained, in representation for criminal activity, employees are urged to contact a private lawyer for representation when either the police or the OHP are involved. The employee should request that the investigation be postponed until the private lawyer is available.

In any case, except for cases involving the *Garrity Warning* explained below, employees do not have to give up their

constitutional rights to be free of self incrimination. Employees do not have to give details about an incident that may incriminate them with respect to criminal prosecution.

The OHP and the police will try to intimidate bargaining unit members. They may say that refusing to answer is yet another form of insubordination. It is not -- *if such an answer may incriminate the person questioned.*

It should be noted that if investigations conducted by the OHP or/and police are used in the decision to discipline employees, a copy of the investigation should be requested by the steward. If an employee has requested that a steward be present at a meeting with the OHP but is denied one, and if the information from the meeting is used to support discipline, then this denial should be raised as a procedural defect in the discipline. The denial of a steward in such a circumstance may also be grounds for an unfair labor practice.

Garrity Warnings

Only if the Employer states that what is said in a meeting will not lead to criminal charges, then the employee no longer has the right to silence. This is known as the "Garrity Warning." Therefore, if the employer does not provide a Garrity warning, ask for one. As a result, the employee must answer the questions put to him/her. An employee or the steward should insist that the Garrity Warning be provided in writing so that the employee has documentation that it was provided.

(Continued)

How Do These Rules Affect Witnesses?

If a person is a witness to an event, a person is required to state truthfully what he/she observed. A steward is no exception.

However, SERB has ruled that the steward has no duty to reveal to the employer facts learned during the course of an investigation. There is a distinction between being a witness to an event and obtaining information as a result of being a steward. If a steward is a witness to an event, he/she must state truthfully what he/she saw if asked or required by the employer.

OCSEA

AFSCME Local 11 - AFL-CIO

Revised 3/09

Printed In-House by
OCSEA

