

## **Use of Admissions Made During Employer's Disciplinary Investigation in Criminal Proceedings**

The question whether admissions made by an employee during management disciplinary investigations can be used against the employee in subsequent criminal proceedings has been addressed by the U.S. Supreme Court in its Garrity v. New Jersey decision.<sup>1</sup> A police officer, who faced dismissal if he refused to answer questions in an internal investigation hearing, was convicted in a criminal proceeding based on evidence that included the testimony he gave in the administrative investigation. The Supreme Court held the statements in the investigation were coerced because of the threat of dismissal and were inadmissible in the criminal proceeding because there was no effective waiver of the police officer's self-incrimination rights.<sup>2</sup>

In subsequent cases, the Supreme Court held that public employees could not be fired for refusing to waive their self-incrimination rights in an administrative investigation of their misconduct.<sup>3</sup> The Court also has indicated that a public employee can be required to answer incriminating questions, and be fired for refusal to answer, if offered immunity against use of the answer in future criminal proceedings.<sup>4</sup> The Court stated: "(I)f answers are to be required in such circumstances, States must offer to the witness whatever immunity is required to supplant the privilege and may not insist that the employee or contractor waive such immunity."<sup>5</sup> The U.S. Supreme Court has not defined *how* the state must offer

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<sup>1</sup> 385 U.S. 493 (1967).

<sup>2</sup> 385 U.S. at 500.

<sup>3</sup> Gardner v. Broderick, 392 U.S. 273 (1968). Uniformed Sanitation Men Ass'n v. Commissioner of Sanitation, 392 U.S. 280 (1968).

<sup>4</sup> Gardner, 392 U.S. at 278. Lefkowitz v. Turley, 414 U.S. 70 (1973).

<sup>5</sup> Lefkowitz, 414 U.S. at 85.

immunity to the employee, and the answer to that question remains unresolved in Vermont.<sup>6</sup>

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<sup>6</sup> Burlington Police Officers Association v. City of Burlington, 166 Vt. 581 (1996).