

**Contract Administration Unit**

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# Letter carrier rights during an investigation

**F**rom time to time, letter carriers may be required to participate in different types of investigations conducted either by Postal Service management, agents of the USPS Inspection Service, or agents of the USPS Office of Inspector General. Exercising the right to union representation during an investigatory interview is one of the most important ways letter carriers can protect themselves during an investigation. This month's Contract Talk will explain this right, as well as the different types of warnings letter carriers might receive when they are questioned during an investigation.

The rights to representation during an investigatory interview, known as Weingarten Rights, were established by the Supreme Court in the landmark case *NLRB v. J. Weingarten, U.S. Supreme Court, 1975*. These rights are applicable regardless of which entity is conducting the investigation. There are a few things letter carriers should keep in mind regarding Weingarten Rights and when they apply.

First, Weingarten Rights apply only when the employee reasonably believes that discipline could result from the investigatory interview. Whether or not an employee's belief is reasonable depends on the circumstances of each case. Second, they do not apply when management calls in a carrier for the purpose of issuing disciplinary action. Letter carriers who are issued a written disciplinary notice should request to speak to a shop steward immediately upon receiving the discipline.

Additionally, only the employee can invoke these rights; the shop steward cannot exercise these rights on an employee's behalf. There is no legal requirement placed on the Postal Service to inform employees of their Weingarten Rights. If letter carriers believe that discipline could result from an interview, they should read the following statement before the meeting starts:

If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative, officer, or steward be present at this meeting. Without my union representative present, I respectfully choose not to answer any questions or participate in this discussion.

Once a steward has been provided, letter carriers have the right to a pre-interview consultation with their representative before being interviewed by management. This right also is available in interviews with postal inspectors or OIG agents. The steward will provide the carrier with guidance in the pre-interview consultation and also will take an active role during

questioning. Finally, Weingarten Rights allow the shop steward to be an active participant in the meeting. It would be a violation of these rights if management instructed the shop steward to remain silent during the interview.

Since Section 665.3 of the *Employee and Labor Relations Manual (ELM)* requires all postal employees to cooperate with postal investigations, the Postal Service may take disciplinary action against employees if they fail to cooperate during a normal investigatory interview that does not cross the threshold into a criminal investigation. This would appear to put the employee in an impossible position. Should an employee answer questions even if the answers may result in criminal charges, or should the employee refuse to answer, risking the possibility of discipline for "failure to cooperate" in an investigation?

**If letter carriers are asked to participate in interviews** or questioning conducted by the Postal Inspection Service or the OIG, there are additional rights and warnings that help to resolve these impossible situations. Postal inspectors and OIG agents are federal law enforcement officers and have the authority to investigate incidents—and the power to arrest—where criminal prosecution may result.

Under Article 17, Section 3 of the National Agreement, letter carriers have the right to be accompanied by a shop steward or union representative when being questioned by the Inspection Service. Article 17, Section 3 states in pertinent part:

If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted.

When being interviewed by agents of the Inspection Service or the Office of the Inspector General, letter carriers may receive one of three warnings. Because these agents are law enforcement officers, the law requires them to give either a Garrity, Kalkines or Miranda warning. These warnings are generally given when an agency is investigating a criminal matter, so employees who receive one should take the matter very seriously. If the warning is given in writing, the letter carrier should carefully read what is written before signing the form.

The Garrity warning does afford the letter carrier the right to remain silent, but also allows federal law enforcement officers to use statements provided by suspects in both administrative and criminal investigations.

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# Letter carrier rights during an investigation (continued)

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An example of a Garrity warning may read like this:

You are being asked to provide information as part of an internal and/or administrative investigation. This is a voluntary interview and you do not have to answer questions if your answers would tend to implicate you in a crime. No disciplinary action will be taken against you solely for refusing to answer questions. However, the evidentiary value of your silence may be considered in administrative proceedings as part of the facts surrounding your case. Any statement you do choose to provide may be used as evidence in criminal and/or administrative proceedings.

The Kalkines warning explains that a letter carrier is required to make statements and cooperate, even if it could lead to disciplinary action or discharge. This warning does, however, provide criminal immunity for any statements given.

The exact wording of a Kalkines warning may vary slightly, however, an example could read something like:

You are being questioned as part of an internal and/or administrative investigation. You will be asked several specific questions concerning your official duties, and you must answer these questions to the best of your ability. Failure to answer completely and truthfully may result in disciplinary action, including dismissal. Your answers and any information derived from them may be used against you in administrative proceedings. However, neither your answers nor any information derived from them may be used against you in criminal proceedings, except if you knowingly and willfully make false statements.

The most well-known warning is Miranda. Most people are familiar with this warning from watching crime programs on television. The Miranda warning is:

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to have an attorney present before any questioning. If you cannot afford an attorney, one will be appointed to represent you before any questioning.

Once a Miranda warning is given, anything letter carriers say can be used in a court of law to try to prove their guilt. If you are given this warning, you should consult with an attorney before answering any questions. Postal inspectors and OIG agents often present a PS Form 1067, Warning and Waiver of Rights and request that employees sign it. By signing this form, postal employees waive their Miranda Rights. Letter carriers should not sign PS Form 1067 without first consulting with an attorney. If you do sign a PS Form 1067, anything said from that point forward can be used against you in a court of law.

If letter carriers are given any of these warnings, and there is reason to believe that the carriers may be subject to criminal prosecution, they should immediately consult with an attorney in addition to exercising the right to have a steward present under the Weingarten rule.

**For more information on Weingarten Rights and the warnings mentioned above, please see the 2023 *Letter Carrier Resource Guide* on the NALC website or contact your shop steward or branch officer.**

## Mutual Exchanges

**CA: Carmichael (3/97) to Valley Center, Escondido, CA or surrounding areas.** Carrier since 1997. Seeking mutual exchange. Deliveries in Carmichael. Lisa, 916-425-6153 or crazy\_kalisz@yahoo.com.

**FL: Miami Gardens (9/17) to Fort Lauderdale or Broward County, FL.** Seeking mutual exchange. Robert, 808-392-8798 (call or text) or rbt\_lopez@yahoo.com.

**FL: Tarpon Springs (12/00) to Atlanta, GA or surrounding areas.** Tarpon Springs and Holiday with 27 city routes. Mostly curbside. Jim, 727-808-7645 or richjim3@verizon.net.

**PA: Pittsburgh (5/19) to Phoenix, AZ or surrounding area.** Timothy, 717-439-0063 (text or call) or 24ktlg@gmail.com.

## How to place a Mutual Exchange ad

The cost of Mutual Exchange ads is \$15 for up to 30 words and \$25 for 31-50 words per month. Ads must be received by the 5th of the month preceding the month in which the ad will appear (e.g., October's deadline is for the November publication). Mail ad with check (payable to NALC) to: Mutual Exchange Ads, Postal Record, 100 Indiana Ave. NW, Washington, DC 20001-2144.

Ads are published for NALC members only. A branch officer or steward must endorse the ad to certify membership. Include your name, address and branch

number. Begin each ad with your state abbreviation, city and seniority date.

Specific route information or mention of three-way transfers will not be published, nor any wording that offers cash or property to facilitate an exchange. Mutual exchanges must be approved by both postmasters involved. Seniority of carriers involved shall be governed by Article 41, Sec. 2E of the National Agreement. Carriers may not exchange assignments, since vacated positions must be posted for bids in accordance with local and national agreements.