

CRITICAL INCIDENTS



NFOP Labor Services

WEBINAR

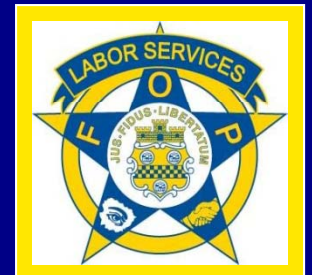
November 3, 2011

WELCOME

Presented By:
National Fraternal Order of Police
Labor Services Division

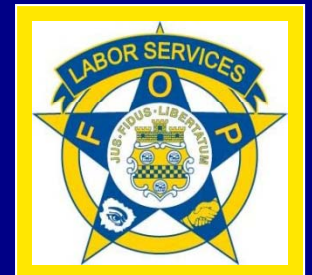
Instructor:

Michael E. Coviello



OVERVIEW

- Critical Incidents
 - What is a critical incident?
 - What to do at the scene
 - As the subject officer
 - As the FOP Representative
 - The investigations
 - The right to remain silent
 - *Garrity*



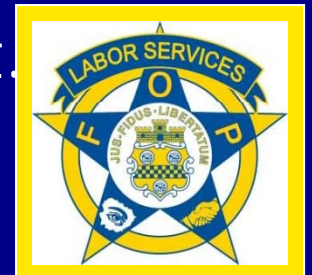
Critical Incidents

What is a Critical Incident?

- Generic definition:

Any sudden event involving a police officer that results in an immediate investigation with no advanced notice to the subject officer and potentially resulting in the arrest, suspension, or termination of the subject officer and includes:

- Shootings
- In-custody deaths
- Use of force/weapon discharge
- Car accidents
- Any allegation of duty-related criminal conduct.

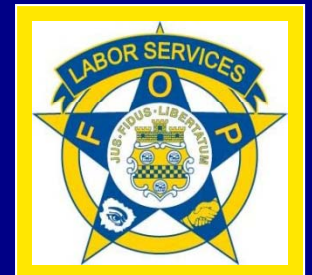


How Often Do Critical Incidents Happen?

Law Enforcement Officer Fatalities as of October, 2011

	2011	2010	% Change
Total Fatalities	145	121	+20%
Gunfire	52	42	+24%
Traffic Incidents	53	61	-13%
Other Causes	40	18	+122%

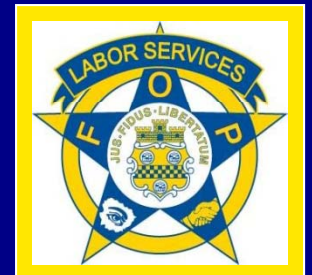
Source: www.nleomf.org.



4 Things You NEVER Do

When a LEO is involved in a critical incident the LEO is the "suspect" in a criminal investigation. Therefore:

1. **NEVER** Give a Voluntary Statement
2. **NEVER** Take a Polygraph (see BOR)
3. **NEVER** Give Blood or Urine

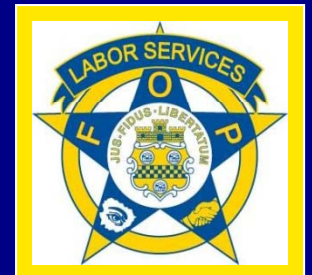


4 Things You NEVER Do

4. NEVER talk to :

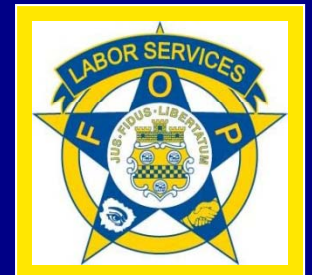
- Crisis Response Person/Team
- Victim Advocate
- Debriefing Team
- Peer Groups

- NO confidentially unless covered by State Statute
- Chaplains = NO confidentially



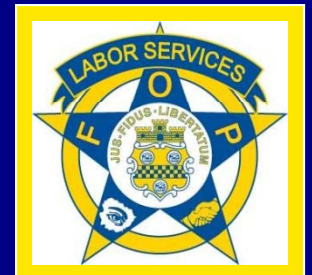
On Scene

- Officer involved must:
 - Secure the scene and as much evidence as possible;
 - Notify dispatch **AND** command;
 - Contact EMS;
 - **Contact the FOP Rep and Attorney; and,**
 - **THEN REMAIN SILENT!!**
 - Privileged communications



On Scene

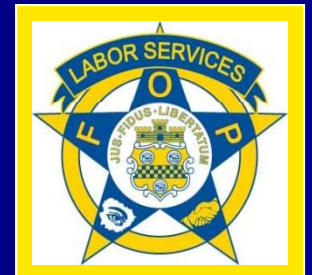
- The FOP Rep and uninvolved officers must:
 - Ensure subject officer is o.k. (He/She ISN'T);
 - Assist subject officer in contacting Rep/Atty;
 - Stand by subject officer until Rep arrives;
 - Not talk about the facts;
 - Provide Rep/Atty w/as much info as possible;
 - Remind subject officer to **REMAIN SILENT!!**



On Scene

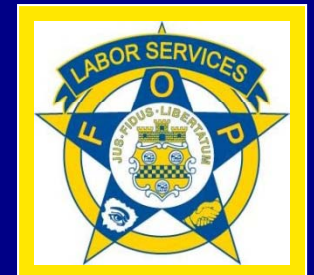
Little things mean a lot.

- Put subject officer in an air conditioned/ heated car—NOT the back of a patrol car;
- Get plenty of water;
- Get food;
- Notify family;
- Have EMS check if necessary;
- Talk about trivial matters;
- Ask Command to be released from the scene ASAP.



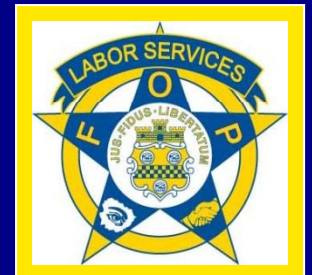
The Chain Reaction

- Critical Incidents set off a chain reaction
 - Criminal investigation
 - Your own agency
 - “Farmed-out” to another agency
 - State attorney
 - Media
 - Internal investigation
 - Mandatory cooperation
 - Paid leave
 - “Desk duty”



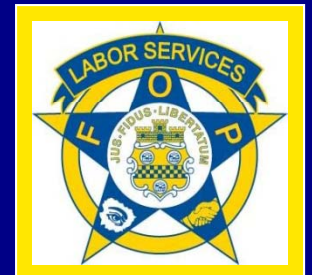
The Chain Reaction

- Civil litigation
- Possible POST review
- Coroner's inquest
- Citizen Review Board



The Homicide Investigation

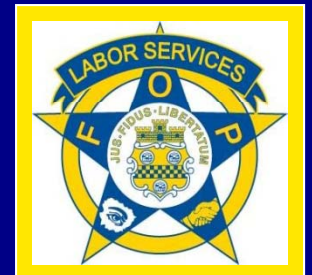
- The shooting will be investigated as a HOMICIDE by:
 - Detectives from your own agency;
 - Detectives from a neighboring agency, or;
 - All of the above.
- Only the State Attorney can:
 - grant immunity;
 - make a filing decision; or,
 - clear the shooting (grand jury).



What To Do As A Suspect

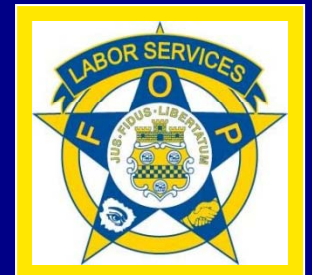
Do what all suspects should do:

- Ask for an attorney
- Speak only to your attorney
- Do not answer **ANY** questions without your attorney present
- Do **EXACTLY** what your attorney tells you to do.



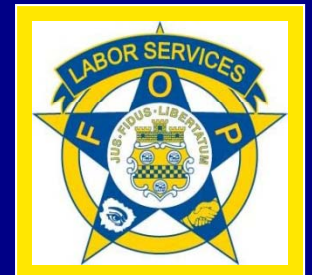
What You Can Expect

- You will be “Detained” for many hours, unless you are injured
- Your weapon(s) will be seized
- Your uniform will be seized
- You will be “processed”
 - Photographed
 - Swabbed
- You will be put on paid administrative leave
- You will see media reports



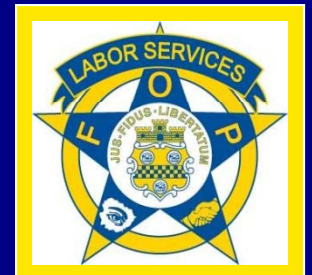
What You Will “Feel”

- Taking a life is the worst event in the life of any human being.
- There will be an adrenaline rush, followed by exhaustion, followed by euphoria, followed by depression, followed by...?
- Your memory will take days, if not weeks to fully come to you.
- You will begin second guessing yourself.
- You will want to talk.
- This is no time to play the “tough-guy”.
- You are alive, that is all that matters!



What the FOP Will Do

- The FOP will ensure you are legally protected.
- The FOP will provide for any resources or services you and your family need.
- The FOP will deal with the bureaucracy.
- The FOP will stand with you, not just behind you or at your side, but in front of you as well.



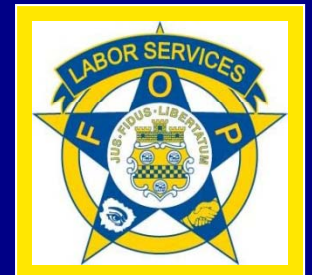
Internal Affairs and The Bill of Rights

Representing FOP Members in Internal Investigations

- Meet with the subject officer and get prepared.
- Grill the officer for every fact you can get.
- Dress appropriately for the occasion.
- Re-read the Bill of Rights.
- BRING THE BILL OF RIGHTS WITH YOU!!
- Demand to Know the type of investigation being conducted.
- Demand *Garrity* warning- ON THE RECORD.
- Never ASSUME anything is OFF THE RECORD.

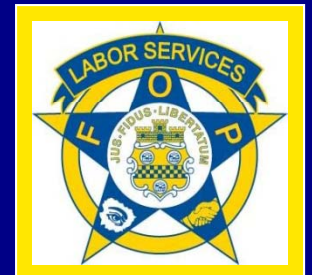


Garrity



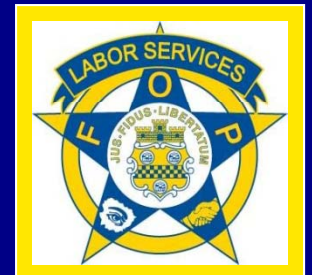
Garrity Rule

- *Garrity v. New Jersey*, 385 U.S. 493 (1966)
- Fifth Amendment Rights in Law Enforcement Disciplinary setting.
- *Garrity* rule stands for the premise that a law enforcement officer has a right to be free from compulsory self-incrimination in the disciplinary process.



Garrity (continued)

- Police Officers were questioned about ticket fixing.
- The L.E.O.s were ordered to respond to the investigator's questions.
- Their answers were used to convict them.
- They appealed to the U.S. Supreme Court.



Garrity (continued)

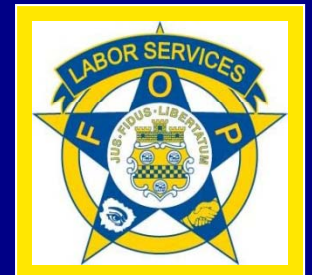
The Court ruled that:

- The use of their statements violated the 5th Amendment;
- The officers were forced to choose between self-incrimination and job forfeiture; and,
- That, "L.E.O.s are not relegated to a watered-down version of their constitutional rights."



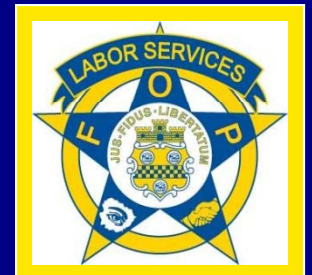
Garrity (continued)

- The *Garrity* rule requires the agency or department to:
 - Order the officer to answer the question under the threat of disciplinary action;
 - Ask questions which were specifically, directly, and narrowly related to the officer's duties or the officer's fitness for duty; and,
 - Advise the officer that the answers to the questions will not be used against the officer in a criminal proceeding.



Garrity (continued)

- If an officer refuses to answer the employer's questions, the officer may be disciplined for insubordination.
- Essential to the application of the *Garrity* rule is that the employer actually "orders" the employee to respond to questions, and that the employee be compelled by threat of possible discharge for failure to respond to the questions.



Garrity (continued)

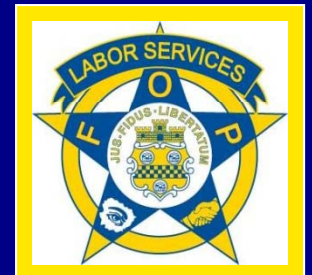
When and how does *Garrity* attach?

- Some pre-requisites:

- *Garrity* warnings/rights are actually read to the subject officer;

or,

- The officer is threatened with the loss of employment for failure to speak rendering the responsive statement compelled.



Garrity (continued)

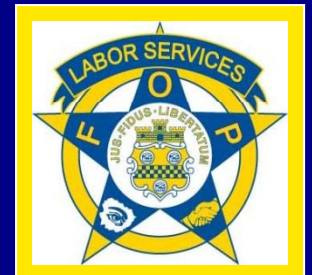
The officer faces a choice of:

1. Self-incrimination;
2. Lying; or,
3. Injurious silence (loss of employment).



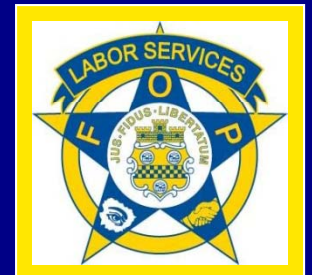
Garrity (continued)

- Scope of Immunity:
 - A compelled statement under *Garrity* gains immunity in a subsequent criminal proceeding.
- However, a statement given under *Garrity* can be used for a wide variety of other purposes:



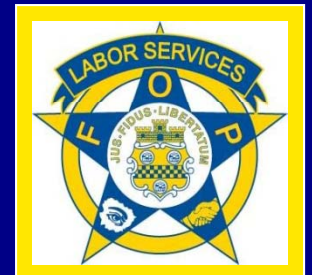
Garrity (continued)

- (1) against the officer in a disciplinary process;
- (2) civil lawsuit brought against the officer;
- (3) criminal prosecutions of the other officers; and,
- (4) against other officers.



"Implied" *Garrity*

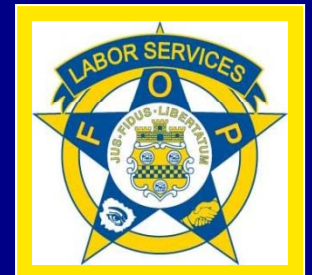
- In circumstances where an employer does not actually give an "affirmative" guarantee of immunity before demanding answers, there is a split among jurisdictions on whether an *implied* immunity applies.



“Implied” *Garrity* (continued)

Minority of courts hold that *Garrity* attaches in the absence of an overt threat of termination if:

1. the employee “subjectively” believes that failure to answer questions will result in his/her loss of job; and
2. the employee’s belief is “objectively” reasonable at the time the statement is made.



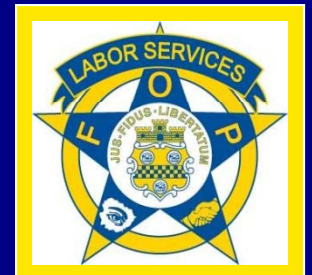
"Implied" *Garrity* (continued)

- Majority of courts hold an employer must expressly warn the officer that failure to respond could lead to disciplinary action.
- Law enforcement officers must remember that the agency or board asking the questions must have the power to compel the officer to answer the questions under the threat of termination



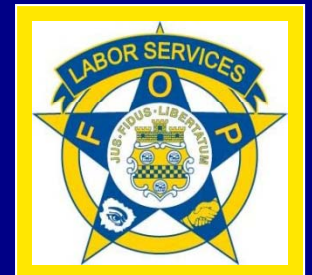
Garrity Immunity: Use and Derivative Use

- Use and derivative use immunity provides an officer immunity from the use in a subsequent criminal proceeding of his/her statements and the fruits of those statements made in an administrative interrogation.



Garrity Immunity: Transactional Immunity

- Transactional immunity prohibits any prosecution over the entire transaction which is the subject of the administrative interrogation.

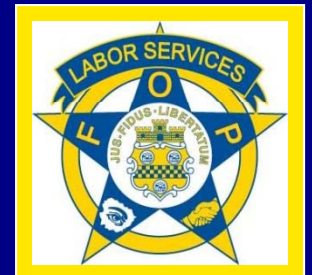


Garrity and Other Evidence

- *GA POST v. Anderson*, 658 SE2d 840 (Ga. App., 2008).

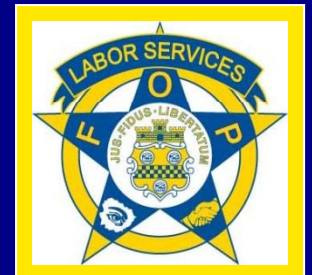
Garrity does not provide immunity from procedure, only statements. Sheriff refused to take investigators to scene of alleged incident resulting in his loss of POST certification.

Revocation affirmed.



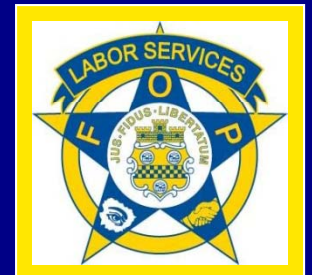
Garrity and Other Evidence

- *People v. Carey*, --- N.E.2d ----, 2008 WL 4891383 (Ill.App. 1 Dist., 2008)
 - LEO charged with DUI and Aggravated Assault
 - Submitted to BAC test upon being ordered to do so by IA investigator during administrative investigation
 - May have been threatened w/termination for refusal
 - Court ruled *Garrity* inapplicable as BAC results are non-testimonial
 - Consent irrelevant to BAC admissibility in Illinois



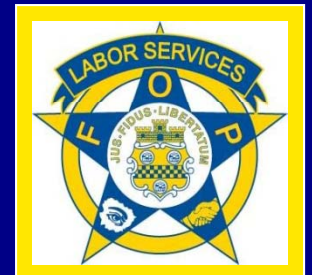
Garrity and Other Proceedings

- *In re A.D.J.*, 757 N.W.2d 70 (S.D., 2008)
 - A termination of parental rights case
 - Father (not an LEO) sought continuance pending criminal trial because testimony would be used at criminal trial
 - Court held there is no *Garrity*-type immunity for voluntary participation in civil proceedings and no 5th Amendment violation for denying continuance as Father's testimony was not compelled in the civil case



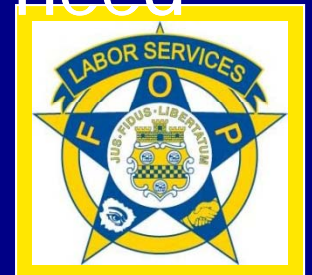
Garrity and Other Proceedings

- *U.S. v. Vangates*, 287 F.3d 1315 (11th Cir. 2002)
 - Corrections officer investigated for battery on inmate.
 - Cleared in IA but sued in Civil Rights case.
 - Ordered to appear and cooperate.
 - IA admitted in civil case and she testified.
 - Testimony was used to convict in federal criminal trial.
 - Subjective belief that she had to testify was not objectively reasonable.



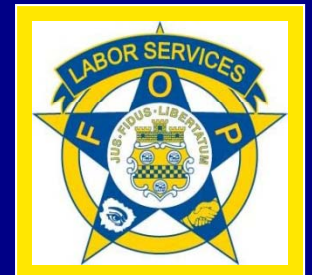
Summary

- Protect your life first and address the legal concerns later
- Know the type of investigation
 - Criminal vs. Administrative/Internal
- Know and understand your rights
 - 5th Amendment vs. *Garrity* (LEO Bill of Rights)
- Speak to no-one other than an attorney while under criminal investigation
- Do not go it alone – get help when you need it



Questions and Answers

- Issues raised in this seminar
- Other Issues
- Critique/Evaluation Forms



Contact Information

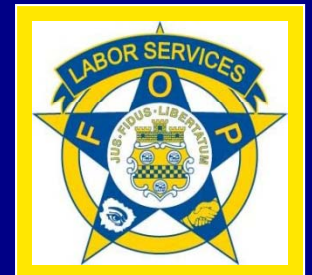
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THANK YOU