

## WEINGARTEN RIGHTS

Weingarten rights guarantee an employee the right to Union representation during an investigatory interview. These rights, established by the Supreme Court, in 1975 in the case of *J. Weingarten Inc.*, must be claimed by the employee. The supervisor has no obligation to inform an employee that s/he is entitled to Union representation.

### What is an Investigatory Interview?

An investigatory interview is one in which a Supervisor questions an employee to obtain information which could be used as a basis for discipline or asks an employee to defend his/her conduct. If an employee has a reasonable belief that discipline or discharge may result from what s/he says, the employee has the right to request Union representation.

Examples of such an interview are:

- The interview is part of the employer's disciplinary procedure or is a component of the employer's procedure for determining whether discipline will be imposed.
- The purpose of the interview is to investigate an employee's performance where discipline, demotion or other adverse consequences to the employee's job status or working conditions are a possible result.
- The purpose of the interview is to elicit facts from the employee to support disciplinary action that is probable or that is being considered, or to obtain admissions of misconduct or other evidence to support a disciplinary decision already made.
- The employee is required to explain his/her conduct, or defend it during the interview, or is compelled to answer questions or give evidence.

It is an obligation of the Union to educate bargaining unit employees about their Weingarten rights **BEFORE** an occasion to use them arises. An employee must state to the employer that he/she wants a Union representative present; the employer has no obligation to ask: the employee if she/he wants a representative.

### Weingarten Rules

When an investigatory interview occurs, the following rules apply:

Rule 1 - The employee must make a clear request for Union representation before or during the interview. The employee can't be punished for making this request.

Rule 2 - After the employee makes the request, the supervisor has 3 options. S/he may either:

- Grant the request and delay the interview until the Union representative arrives and has a chance to consult privately with the employee: or
- Deny the request and end the interview immediately; or

- Give the employee a Choice of: 1)having the interview without representation or 2) ending the interview

Rule 3 - If the supervisor denies the request and continues to ask questions, this is an unfair labor practice and the employee has a right to refuse to answer. The employee cannot be disciplined for such refusal but is required to sit there until the supervisor terminates the interview. Leaving before this happens may constitute punishable insubordination.

### Union Representative's Rights Under Weingarten

You are not required to merely be 'silent witness'. You have the right to:

- be informed by the supervisor of the subject matter of the interview
- take the employee aside for a private conference before questioning begins
- speak during the interview
- request that the supervisor clarify a question so that what is being asked is understood
- give employee advice on how to answer a question
- provide additional information to the supervisor at the end of the questioning.

You do not have the right to tell the employee not to answer nor, obviously, to give false answers. An employee can be disciplined for refusing to answer questions.

A standard statement to suggest to members is:

"If this discussion could in any way lead to my being disciplined or discharged, request that my Union representative be present at the meeting. Without representation, I choose not to answer any questions."

The employer will be ordered to cease and desist and to post a notice. Discipline that is imposed for insisting on Weingarten rights will be overturned. Discipline will not be overturned if the discipline was for reasons other than insistence on Weingarten rights. Although information gained by the Employer from the employee in a meeting during which a breach of Weingarten rights occurred, may be excluded from a hearing on the matter.

### **An employee has NO right to the presence of a Union representative where:**

- The meeting is merely for the purpose of conveying work instructions, training, or communicating needed corrections in the employee's work techniques.
- The employee is assured by the employer prior to the interview that no discipline or employment consequences can result from the interview.
- The employer has reached a final decision to impose certain discipline on the employee prior to the interview, and the purpose of the interview is to inform the employee of the discipline or to impose it.

- Any conversation or discussion about the previously determined discipline which is initiated by the employee and without employer encouragement or instigation after the employee is informed of the action.

Even in the above four (4) circumstances, the employee can still ask for representation. Most employers will permit a representative to attend even when not required to.