

WEINGARTEN RIGHTS

"Right to Remain to Remain Silent" by Steve Albanese

Advice Memorandum from NLRB: Does an employee have the right to select a particular Union steward as his representative at a Weingarten interview

Intro: In 1975, in **NLRB v. J. WEINGARTEN, INC., 420 U.S. 251 (1975)**, the U.S. Supreme Court announced the rights of employees in the presence of union representatives during investigatory interviews. Since that case involved a clerk being investigated by the Weingarten Company, these rights have become known as Weingarten rights.

Summary: When management begins to ask you questions that could lead to your being disciplined, you don't have to face it alone. If you have a reasonable belief that answers you give could be used by the supervisor to discipline you, the U.S. Supreme Court says you can refuse to answer any questions until the union steward is on the scene and has had a chance to talk things over with you first. It's your right to have the steward present during the questioning to advise you, ask supervisors for clarifications, and provide additional information at the end of the session. The employee subject to the interview must reasonably believe that the investigatory interview will result in disciplinary action. A meeting called by the employer for the purpose of informing the employee of the imposition of discipline already decided, is not an interview subject to Weingarten rights.

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Management is not required to inform the employee of his/her *Weingarten* rights; it is the employees responsibility to know and request. Once you've asked for the steward, any attempt by management to continue asking questions before a steward gets there is an unfair labor practice. If supervisors pressure you by telling you that "you're only making things worse for yourself" by asking for a steward, that's against the law. So be sure to:

- **Request** the presence of a Union representative.
- **Ask** if you are a suspect in a criminal matter.
- **Do not** consent to a search of person or property. Ask to see a search warrant.
- **Do not** waive any rights, including the **right to remain silent**.
- **Do not** sign a waiver-of-rights form, admit or deny any allegations, or make any written or oral statement unless an attorney and/or Union representative is personally present. These are not complete guidelines—always consult with a union representative and/or attorney.

When the employee makes the request for a union representative to be present management has three options:

- (1) it can stop questioning until the representative arrives.
- (2) it can call off the interview or,
- (3) it can tell the employee that it will call off the interview unless the employee voluntarily gives up his/her rights to a union representative (an option the employee should always refuse.)

The Role of a Union Representative

Employers will often assert that the only role of a union representative in an investigatory interview is to observe the discussion. **The Supreme Court, however, clearly acknowledges a representative's right to assist and counsel workers during the interview.**

The Supreme Court has also ruled that during an investigatory interview management must inform the union representative of the subject of the interrogation. The representative must also be allowed to speak privately with the employee before the interview. During the questioning, the representative **can** interrupt to clarify a question or to object to confusing or intimidating tactics.

While the interview is in progress the representative can not tell the employee what to say but he may advise them on how to answer a question.

What to Say if Management Asks Questions That Could Lead to Discipline

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

Know the Limits

Just as it's important to know what your Weingarten rights are, it's also important to know the limits.

You are not entitled to have a steward present every time a supervisor wants to talk to you. But if the discussion begins to change into questioning that could lead to discipline, you have the right to ask for your steward before the conversation goes any further.

If you're called in to the supervisor's office for an investigation, you can't refuse to go without your steward. All you can do is to refuse to answer questions until the steward gets there and you've had a chance to talk things over. If you are called at home and asked the same kind of questions, you have a right to insist on waiting to answer them in the presence of a steward.

Remember an investigatory interview is not a "True Confessions" meeting or some infomercial psychic doling out advice to an employee--it is a meeting which could

possibly lead to disciplinary action including removal from the Postal Service (editor's note: or any unionized job position).

The Rules at a Glance

Under the Supreme Court's Weingarten decision, 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 cannot be punished for making this request.

RULE 2:

After the employee makes the request, the employer must choose from among three options. The Employer must either:

- Grant the request and delay questioning 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 employer denies the request for union representation, and continues to ask questions, it commits an unfair labor practice and the employee has a right to refuse to answer. The employer may not discipline the employee for such a refusal.