

# Weingarten Rights

In 1975 the U.S. Supreme Court ruled that employees have a right to union representation during *investigatory interviews* by management. These rights are called "Weingarten rights."

## *What is an investigatory interview?*

An investigatory interview occurs whenever a supervisor questions an employee to obtain information which could be used as a basis for discipline. The employee must have a "reasonable belief" that disciplinary action may result from what he or she says at the interview. For example, an employee who is questioned about drugs is clearly involved in an investigatory interview and has a right to union representation.

However, a foreman who gives instruction on how to do a job is not conducting an investigatory interview. The possibility of discipline resulting from such a "shop floor" discussion is usually remote.

Employees are not entitled to union representation if the employer is simply informing the employee of some discipline which has already been decided.

## *When an investigatory interview occurs, the following rules apply:*

**Rule 1** The *employee* must make a request for union representation either *before* or *during* the interview. Employers have *no duty* to inform workers of their rights. Workers who fail to request union representation can be questioned at length.

**Rule 2** Once an employee makes a request, the employer must choose from among the following options:

(a) The employer may *grant the request* and delay questioning until the union representative arrives and has a chance to consult with the employee.

(b) The employer may *deny the request* and *end* the interview immediately (and possibly proceed with discipline based on other evidence).

(c) The employer may *give the employee a choice* of (1) continuing the interview without representation, or (2) discontinuing the interview.

Under no circumstances can an employer ignore or deny a Weingarten request and continue asking questions.

### Rule 3

If an employer denies the request for union representation, the worker has a *right to refuse* to answer further questions. The employer may not discipline the employee for such a refusal. (However, you do not have the right to refuse to *attend* the meeting even if union representation has not been provided.)

### *The Role of the Steward*

The presence of a union steward can be crucial, and both members and stewards should be aware of their rights.

- The employee does not have the right to a union representative of their choice. The choice of a union representative may be based on availability.
- The employee and the steward have the right to know the subject matter of the interview.
- The steward must be allowed to take the worker aside for a private pre-interview conference before questioning begins.
- The steward must be allowed to speak during the interview.
- The steward can request that the supervisor clarify a question so that the worker can understand what is being asked.
- Before questions have been asked, the steward can give advice on how to answer.
- When the questioning ends, the steward can provide additional information to the supervisor.
- If Weingarten rules are complied with, stewards have no right to tell workers not to answer questions, nor to give false answers.

Unions should educate members about their Weingarten rights. The presence of a union steward can be crucial. It can save workers from making foolish statements that may lead to discipline or discharge.

Source: Robert M. Schwartz, "THE LEGAL RIGHTS OF UNION STEWARDS," Work Rights Press, Boston, 1988.