



Weingarten Rights*

Union Representatiuon During Investigation Interviews

One of the important duties of Grievance Handlers is to prevent management from intimidating workers. Nowhere is this more important than in closed-door meetings when supervisors or guards, often trained in interrogation techniques, attempt to coerce workers to confess to mistakes or wrongdoing.

The National Labor Relations Act gives workers the right to union representation during investigation interviews conducted by management. Although not explicit in the Act, the right was clarified by the U.S. Supreme Court in 1975 in the case of the *NLRB v. J. Weingarten, Inc.* This case established what is commonly known as the employees "*Weingarten Rights*".

*Source: Robert M. Schwartz, "The Legal Rights of Union Stewards," (Massachusetts: Work Rights Press, 1998, 1994, 1999).



Grievance Handlers Should Encourage Workers To Assert Their *Weingarten Rights*

The presence of a Grievance Handler during an investigation interview can help protect the worker in the following ways:

- Serving as a witness to prevent supervisors from giving a false account of the conversation.
- Objecting to intimidating tactics or confusing questions.
- When appropriate, advising a worker against blindly denying everything, thereby giving the appearance of dishonesty and guilt.
- Helping a worker avoid making fatal admissions.
- Warning a worker against losing his or her temper.
- Raising extenuating factors.

What Is An Investigation Interview?

Weingarten Rights apply during investigation interviews. An investigation interview occurs when: (1) management *questions a worker* to obtain information; and (2) the worker has a *reasonable belief that discipline or other adverse consequences may result* from what he or she says. Investigation interviews relate but are not limited to:

- **absenteeism**
- **accidents**
- **compliance with work rules**
- **damage to company property**
- **drinking**
- **drugs**
- **falsification of records**
- **fighting**
- **insubordination**
- **poor attitude**
- **poor work performance**
- **sabotage**
- **tardiness**
- **violations of safety rules**
- **work slowdowns**



Discussion Vs Investigation?

Not every discussion with management is an investigation interview. For example, a supervisor may speak to a worker about the proper way to do a job. Even if the supervisor asks the worker questions, this is not an investigation interview because the possibility of discipline is remote.

A routine conversation changes character if a supervisor becomes dissatisfied with a worker's answers and takes a hostile attitude. If this happens, the meeting becomes an investigation interview and *Weingarten* applies.

Disciplinary Meeting

When a supervisor calls a worker to the office to announce a warning or discipline, is this an investigation interview? The NLRB rules it is not. The supervisor is merely informing the worker of a previously arrived-at decision. The meeting becomes an investigation interview, however, if the supervisor asks questions related to the subject matter of the discipline.

Note: When possible, Grievance Handler's should attempt to be included in all disciplinary meetings. If the company refuses, your bargaining committee may want to include this in your next contract negotiations.

Worker Rights

Under the Supreme Court's *Weingarten* decision the following rules apply during an investigation interview:

- The worker may request union representation before or during the interview.
- After the request, the employer has three options:
 1. Grant the request and delay questioning until the union representative arrives.
 2. Deny the request and end the interview immediately.
 3. Give the worker a choice of: (a) having the interview without representation; or (b) ending the interview.

If the employer denies the request for union representation and questions the worker, the employer has committed an unfair labor practice and the worker may refuse to answer.



Grievance Handler's Rights

Supervisors are often under the misconception that Grievance Handler's are merely witnesses and unable to speak during investigation meetings. *This is not true.* The union has the right to counsel the worker during the interview and to assist the worker in the presentation of facts.

Legal cases have established the following rights and obligations:

- When the Grievance Handler arrives, management must inform the worker and the union of the subject matter being investigated, i.e., misconduct, tardiness, absenteeism, etc. (*The Supervisor does not have to reveal management's entire case.*)
- The Grievance Handler *can* and *should* take the worker aside for a private pre-interview conference before questioning begins.
- The Grievance Handler *can* speak during the interview. (*The Union is prohibited from bargaining over the purpose of the interview or obstructing the interview.*)
- The Grievance Handler *can* interrupt to object to a question or request the supervisor clarify a question so the worker can understand what is being asked.
- The Grievance Handler *can* advise the worker not to answer questions that are abusive, misleading, badgering, confusing, or harassing.
- When the questioning ends, the Grievance Handler *can* provide information to justify the worker's conduct.

Educating Members About Their Weingarten Rights

Workers sometime confuse the *Weingarten Rights* with the *Miranda* rules. Under the U.S. Supreme Court's *Miranda* decision, police who question criminal suspects in custody must notify them of their right to remain silent and to have a lawyer present. Unfortunately, the Supreme Court did not impose similar requirements in its *Weingarten* decision. Employers have no obligations to inform workers of their rights to union representation. *This is the union's job.*

Every attempt should be made to explain *Weingarten Rights* at union meetings and in newsletters. Local Unions should consider distributing wallet-sized cards for members to carry that state the following:



Instructions to the Member:

If called to a meeting with management, read the following to management or present the card 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 representation present, I choose not to participate in this discussion.

NLRB Charges

Failure on the part of management to adhere to the *Weingarten* rules constitutes an unfair labor practice charge. If you feel that your employer has violated the law you should consult with your International Servicing Representative or your Regional Director.