

Weingarten Rights

One of the most vital functions of a union "steward" or worksite representative is to prevent management from intimidating employees. Nowhere is this more important than in closed-door meetings when supervisors or agents, sometimes trained in interrogation techniques, attempt to coerce employees into confessing to wrongdoing.

The rights of employees to the presence of a union representative during investigatory interviews was upheld by the U.S. Supreme Court in 1975 in *NLRB v. J. Weingarten, Inc.* Since that case involved a clerk being investigated by the Weingarten Company, these rights have become known as "Weingarten Rights."

Unions should encourage workers to assert their Weingarten Rights. The presence of a steward can help in many ways. For example:

- **The steward can help a fearful or inarticulate employee explain what happened.**
- **The steward can raise extenuating factors.**
- **The steward can advise an employee against blindly denying everything (whereby giving the appearance of dishonesty and guilt).**
- **The steward can help prevent an employee from making fatal admissions.**
- **The steward can stop an employee from losing his or her temper, and perhaps getting fired for insubordination.**
- **The steward can serve as a witness to prevent supervisors from giving a false account of the conversation.**

Note: Charges alleging a violation of Weingarten Rights are generally not deferred by the National Labor Relations Board (NLRB), nor are violations considered "de minimus" even if no employee is disciplined.

What Is an Investigatory Interview?

Employees have Weingarten rights during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information that could be used as a basis for discipline or asks an employee to defend his or her conduct. If an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has a right to request union representation.

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Investigatory interviews usually relate to subjects such as:

- absenteeism
- accidents
- damage to company property
- drinking
- drugs
- falsification of records
- fighting
- insubordination
- lateness
- poor attitude
- sabotage
- theft
- violation of safety rules
- work performance

Work location conversations

Not every management initiated discussion is an investigatory interview. For example, a supervisor may talk to a worker about the proper way to do a job. Even if the boss asks questions, this is not an investigatory interview because the possibility of discipline is remote. The same is true of routine conversations to clarify work assignments or explain safety rules.

Nevertheless, even an ordinary shop-floor discussion can change its character if the supervisor is dissatisfied with the employee's answers. If this happens, the employee can insist on the presence of a union representative before the conversation goes any further.

Disciplinary announcements

When a supervisor calls a worker to the office to announce a warning or other discipline, is this an investigatory interview affording the worker a right to union representation? The NLRB says no, because the employer is merely answering a previously arrived-at decision and is not questioning the worker.

Such a meeting, however, can be transformed into an investigatory interview if the supervisor begins to ask questions to support the decision. Note: An employer that has followed a past practice of allowing stewards to be present when supervisors announce discipline, must maintain the practice during the contract term. Refusing to allow a steward to attend would constitute an unlawful unilateral change.

Weingarten Rules

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:

- a. Grant the request and delay questioning until the union representative arrives and has a chance to communicate privately with the employee; or
- b. Deny the request and end the interview immediately; or
- c. 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 the right to refuse to answer. The employer may not discipline the employee for such a refusal.

Rights of Stewards

Employers often assert that the only role of a steward at an investigatory interview is to observe the discussion; in other words, to be a silent witness. The Supreme Court, however, clearly acknowledged a steward's right to assist and counsel workers during the interview. Decided cases establish the following procedures:

1. When the steward arrives, the supervisor must inform the steward of the subject matter of the interview, i.e., the type of misconduct for which discipline is being considered (theft, lateness, drugs etc.).
2. The steward must be allowed to take the worker aside for a private pre-interview conference before questioning begins.
3. The steward must be allowed to speak during the interview. However, the steward does not have the right to bargain over the purpose of the interview.
4. The steward can request that the supervisor clarify a question so that the worker can understand what is being asked.
5. After a question is asked, the steward can give advice on how to answer.
6. When the questioning ends, the steward can provide additional information to the supervisor. It must be emphasized that if the Weingarten rules are complied with, stewards have no right to tell workers not to answer questions, or to give false answers.

Workers can be disciplined if they refuse to answer questions.