

“Weingarten Rights”

Protecting Employees During Company Interrogations

by Robert M. Schwartz

An employee is called in to speak with her supervisor about a fight. She requests your presence as her union representative... When you arrive, the supervisor says your only role is to be a silent witness. What are your rights?

Every steward should be familiar with the area of labor law called “Weingarten rights.” These rights can help employees avoid intimidation and prevent coerced confessions. “Weingarten Rights” were established by the U. S. Supreme Court in a 1975 case involving the J. Weingarten Company. Although the case arose under the private sector National Labor Relations Act (NLRA), its principles have been adopted by many state labor boards for application to public sector employees.

When Weingarten Rights Applies

The Weingarten rules give employees the right to request union representation during investigatory interviews. An investigatory interview occurs whenever an employee is questioned in a manner which causes a reasonable fear that what is said might result in discipline or other adverse consequences.

This obviously includes questioning about theft, drugs, fights, absenteeism, lateness, or similar misconduct. Interrogation about work performance can also arouse reasonable fears. Weingarten does not apply to run of the mill shop floor conversations or to meetings in which supervisors give instructions on operating methods or safety practices.

Weingarten only applies when employees are questioned. If a supervisor calls worker in to give a warning or other discipline, and does not question the employee, Weingarten does not compel the presence of a steward.

According to the Supreme Court, when an employee requests a steward or other union representative, management has three options:

1. It can halt questioning until the steward 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 or her rights to a steward, (an option which employees should always refuse).

When The Steward Arrives

Contrary to what management may assert, the steward is not restricted to being a silent witness. The Supreme Court said that the steward must be allowed to assist and counsel the employee throughout the interrogation.

NLRB and Court decisions establish the following rules:

1. Management must inform the steward of the subject of the interrogation for example, theft, drug use, fighting, etc.
2. The steward must be allowed to take the worker aside for a private pre-interview conference. Here, the steward can give advice on how to respond to the expected questions.
3. During the questioning, the steward can interrupt to clarify a question or to object to confusing or intimidating tactics.
4. The steward can add information at the end of the interview to support the employee's case.

These rights are guaranteed by the National Labor Relations Act. If stewards are prevented from exercising them, unfair labor practice charges should be filed at the National Labor Relations Board. Here is some advice you may want to give and employee prior to questioning:

Do not admit to any misconduct for which discipline can be invoked, even if the misconduct is minor. Do not inform on other employees. Remember that the union constitution prohibits members from causing harm to fellow members.

Do not lose your temper.

Refusing to answer a question may result in discipline for insubordination. However, this is preferable to admitting guilt to charges where the likely punishment is discharge. If you do refuse to answer a question, assert your Fifth Amendment Constitutional right to avoid possible self incrimination.

Often the best answer to a tough question is "I don't know" or "I don't remember."

Spreading The Word

Unfortunately, the Supreme Court did not require employers to tell workers about their right to union assistance, as it did in the Miranda decision covering police interrogations. The union must educate members to request representation. Some unions distribute wallet sized cards and instruct workers to present them whenever they are questioned by management. Here is an example of a Weingarten rights card:

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

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