

Labor Law & Due Process

Weingarten Rights

EMPLOYEE'S RIGHT TO UNION REPRESENTATION

The right of employees to have union representation at investigatory interviews was announced by the U.S. Supreme Court in a 1975 case ([*NLRB vs. Weingarten, Inc.* 420 U.S. 251, 88 LRRM 2689](#)). These rights have become known as the *Weingarten* rights.

Employees have *Weingarten* rights only during investigatory interviews. An investigatory interview occurs when a supervisor questions an employee to obtain information which 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 the right to request union representation. Management is not required to inform the employee of his/her *Weingarten* rights; it is the employees responsibility to know and request.

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.)

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. At the end of the interview the union representative can add information to support the employee's case.

On June 15, 2004, The National Labor Relations Board ruled by a 3-2 vote that employees who work in a nonunionized workplace are not entitled under Section 7 of the National Labor Relations Act to have a coworker accompany them to an interview with their employer, even if the affected employee reasonably believes that the interview might result in discipline.

This decision effectively reversed the July 2000 decision of the Clinton Board that extended Weingarten Rights to nonunion employees.