

# WEINGARTEN RIGHTS

Weingarten rights guarantee an employee the right to Union representation during an investigatory interview. These rights, established by the Supreme Court, in 1975 in the case of ([NLRB vs. Weingarten, Inc. 420 U.S. 251, 88 LRRM 2689](#)),, must be claimed by the employee. The supervisor has no obligation to inform an employee that s/he is entitled to Union representation.

## What is an Investigatory Interview?

An investigatory interview is one in which a Supervisor questions an employee to obtain information which could be used as a basis for discipline or asks an employee to defend his/her conduct. If an employee has a **reasonable belief** that discipline or discharge may result from what s/he says, the employee has the right to request Union representation.

It is an obligation of the Union to educate bargaining unit employees about their Weingarten rights before an occasion to use them arises. *An employee must state to the employer that he/she wants a Union representative present; the employer has no obligation to ask: the employee if she/he wants a representative.*

## Weingarten Rules

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 can't be punished for making this request.

**Rule 2** - After the employee makes the request, the supervisor has 3 options. S/he must either:

1. Grant the request and delay the interview until the Union representative arrives and *has a chance to consult privately with the employee:* or
2. Deny the request and end the interview immediately; or
3. Give the employee a Choice of: **1)** having the interview without representation or **2)** ending the interview

**Rule 3** - If the supervisor denies the request and continues to ask questions, this is an unfair labor practice and the **employee has a right to refuse to answer**. The employee cannot be disciplined for such refusal but is required to sit there until the supervisor terminates the interview. Leaving before this happens may constitute punishable insubordination.

## **Union Representative's Rights Under Weingarten**

You are not required to merely be 'silent witness'. You have the right to:

- Be informed by the supervisor of the subject matter of the interview prior to the interview.
- Take the employee aside for a private conference before questioning begins.
- Speak during the interview.
- Request that the supervisor clarify a question so that what is being asked is understood.
- Give employee advice on how to answer a question.
- Provide additional information to the supervisor at the end of the questioning.

You do not have the right to tell the employee not to answer nor, obviously, to give false answers. An employee can be disciplined for refusing to answer questions.

### **A standard statement to suggest to members is:**

*"If this discussion could in any way lead to my being disciplined or discharged, I request that my Union representative be present at the meeting. Without representation, I choose not to answer any questions."*