

"Mr. Hoffman, the gate guard saw you carrying a large plastic bag to your car yesterday. If it was scrap, you have nothing to worry about. Just tell us what was in it."

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Weingarten Rights

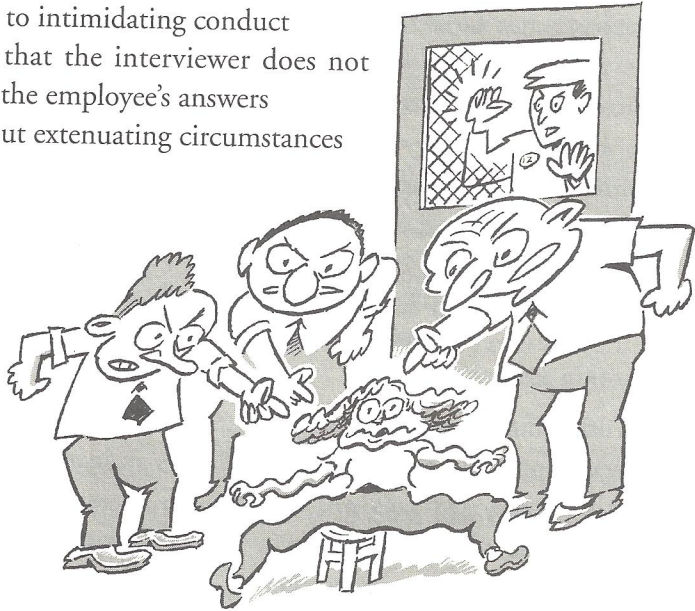
*Investigatory interview • Employee rights
Steward rights • Educating members • ULP charges*

WHEN SUPERVISORS and other employer agents interrogate employees, there is always a danger that they will use coercive methods. In 1975 the U.S. Supreme Court promulgated safeguards known as "*Weingarten* rights."⁹⁶ During an investigatory interview, said the court, employees have a right to request union assistance and can refuse to answer questions until the request is honored.

Unions should encourage members to exercise their *Weingarten* rights. A steward or other representative can:

- Offer advice on how to answer questions
- Help the employee avoid making fatal admissions or insubordinate outbursts

- Object to intimidating conduct
- Insure that the interviewer does not distort the employee's answers
- Point out extenuating circumstances



INVESTIGATORY INTERVIEW

The right to union assistance is limited to investigatory interviews. An investigatory interview occurs when an employee is questioned and reasonably fears discipline or other adverse action. It is immaterial that the interrogator tells the employee: "We are only interested in finding out what happened."

Run-of-the-mill conversation. Not every discussion with management is an investigatory interview. For instance, a supervisor may call a worker to her office for the purpose of counseling or to give instructions. The worker may be apprehensive, but if the likelihood of discipline is remote, the conversation is not investigatory. The

worker cannot refuse to participate or to answer questions without a steward.

Routine discussions can change character, however. If a supervisor becomes angry or begins to ask probing questions, the employee, recognizing that trouble is approaching, can insist that the supervisor summon a representative.

Note: If management expressly pledges that no disciplinary action will result from an employee's answers, an employee must answer questions despite a denial of a request for union assistance.

Disciplinary announcement. A supervisor calls a worker to her office to present a written warning. Is this an investigatory interview? The Board says no, because the supervisor is simply announcing discipline. Unless a contract provision guarantees the union's presence, or the supervisor begins an interrogation, the worker cannot insist on representation.

Medical examination. Routine medical examinations and fitness-for-duty evaluations are not investigatory interviews. If supervision requests a drug or alcohol test, however, the worker must be allowed to seek advice from a representative before agreeing to be screened.⁹⁷

EMPLOYEE RIGHTS

The following procedures apply to investigatory interviews:

The request. The employee can request union representation when the interview begins or at any time thereafter. The employee can specify any available steward or officer.⁹⁸

The response. Upon receiving a *Weingarten* request, the interrogator must choose one of three responses:

1. Halt questioning and call in the requested representative
2. Discontinue the interview⁹⁹
3. Offer the employee a choice of continuing without representation or ending the interview

Refusal to answer. If the interrogator denies a request for representation and continues the interview without the employee's concurrence, the employee can refuse to answer.

STEWARD RIGHTS

Employers sometimes assert that the only function of a steward during an investigatory interview is to be a silent witness. The law says otherwise.

- On arrival, the steward can insist on being told the subject matter of the interview.¹⁰⁰ Management does not have to give away its case, but it must provide at least a general description. For example: "We are investigating a complaint from several employees that Lyndon Bargar has been abusing the company's sign-in policy."
- The steward can insist on a private pre-interview consultation with the employee.¹⁰¹
- The steward can advise the employee on how to respond to particular questions and can object to questions perceived as harassing.¹⁰² The steward cannot repeatedly interrupt, insist that questioning is unnecessary, verbally abuse the interrogator, or attempt to turn the interview into a debate.

The Legal Rights of Union Stewards

- The steward can present extenuating and mitigating circumstances.¹⁰³

If the interrogator refuses to reveal the subject matter or allow a private consultation, the steward can advise the employee not to answer questions until the interviewer complies with the *Weingarten* rules. ULP charges can be filed if the official tells the steward to remain silent or violates any other *Weingarten* rights.

EDUCATING MEMBERS

Weingarten rights are sometimes confused with *Miranda* rights. Under the U.S. Supreme Court's *Miranda* decision, a police officer seeking to question a person in custody must explain the person's right to representation by an attorney. *Weingarten* does not go this far; employers do not have to alert employees of their right to union assistance. The employee must take the initiative to make a request.

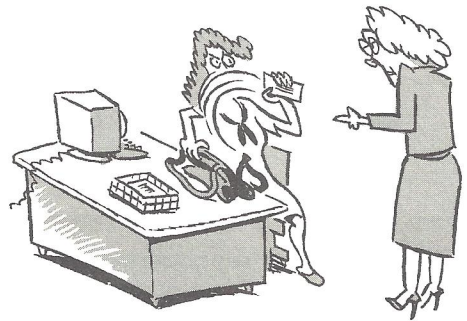
Unions should educate members about the availability and value of union assistance. One technique is to distribute a wallet-sized card with a printed request

(Wallet card)

I REQUEST UNION REPRESENTATION

If my responses to your questions could lead to my being disciplined or terminated, or adversely affect my personal working conditions, I respectfully request that you summon my union representative. Until my representative arrives, I choose not to answer any questions.

for representation. Members should be instructed to present the card if they are called in for questioning.



ULP CHARGES

Compelling a worker to answer questions without representation, limiting a steward to being a silent witness, or withholding any other *Weingarten* right violates Section 8(a)(1) of the NLRA. The union can file a ULP charge even if the employee answered the employer's questions. The labor board does not defer *Weingarten* charges to the grievance process unless the collective bargaining agreement mandates similar procedures.

ULP CHARGE

On February 1, 2011, the employer refused the request of employee Harold Brown for union representation during an investigatory interview.

Questions and Answers

ATTEMPT TO DISSUADE

Q. When a supervisor questioned an employee about an accident, the worker asked for union representation. The supervisor said: "If you insist on a steward, I will have to bring in Labor Relations. If we can keep it at this level, things will be better for you." Violation?

A. Yes. The boss is trying to coerce the employee into abandoning her *Weingarten* rights.

JUMPING THE GUN

Q. A foreperson told a worker to report immediately to Personnel for a talk about her attendance. When the worker asked to speak to her steward first, the foreman said no. Can the worker refuse to go to the office?

A. No. The worker must go to the office and repeat the request for representation.

CONTRACT WAIVER

Q. Can a collective bargaining agreement give up employees' *Weingarten* rights?

A. Yes, if language in the contract says the employer can conduct interrogations outside the presence of a union representative.

SECOND CAUCUS

Q. Can a steward insist on more than one caucus with the employee?

A. The Board has not ruled on this issue.

LOCKER SEARCH

Q. If management orders a worker to open his locker, can the worker refuse until he has a chance to consult his steward?

A. No. *Weingarten* rights only apply to interrogations.

TELEPHONE CALL

Q. A boss calls a worker at home to ask about his role in an accident. Does the worker have to answer the questions?

A. Not immediately. *Weingarten* rights apply to telephone calls. An employee who fears discipline can refuse to answer questions until he has a chance to consult with his union representative.



STAND-IN

Q. If no union official is available, can an employee select a rank-and-file worker to attend an interview?

A. Yes.

HOT SEAT

Q. When management questions a steward about her own misconduct, can the steward insist on representation?

A. Yes. Stewards have the same *Weingarten* rights as rank-and-filers.

REINSTATEMENT

Q. If management rejects a worker's request for union assistance, coerces him into confessing to wrongdoing, and fires him, will the NLRB put the worker back on the job?

A. No. The usual Board remedy in this situation is an order requiring the employer to post a notice that it will obey the law in the future. If the case goes to arbitration, however, the confession will probably be disregarded.¹⁰⁴

QUESTIONS ABOUT OTHERS

Q. If management asks a worker whether another worker committed a theft, can the employee insist on representation?

A. This depends. If the employee is afraid that by not reporting the incident when it occurred, she risks punishment, *Weingarten* rights would apply.¹⁰⁵ But if management assures the witness that she will not suffer any adverse consequences, she would probably lose her right to assistance.

WRITTEN ACCOUNT

Q. A manager asked a worker accused of fighting to “write down what happened.” Did the worker have a right to consult a union representative before complying?

A. Yes. The request is investigatory.

STEWARD OUT SICK

Q. Can a worker insist that an interview be delayed because her steward is out sick?

A. Usually not. Management does not have to hold off questioning if another representative is available to assist the employee.¹⁰⁶

WORK ORDER

Q. Does the *Weingarten* rule give an employee the right to consult his steward before carrying out a work order he believes violates his rights under the union contract?

A. No. A work order is not an interrogation.