

## **Weingarten Rights**

In the 1975 case NLRB v. J. Weingarten Inc., the U.S. Supreme Court declared that unionized employees (in the private sector) have the right to have a building representative present during an investigatory meeting with management when the employee believes the meeting might lead to disciplinary action being taken against him/her. According to the court, these rights arise as a result of the proper functioning of the National Labor Relations Act (NLRA). The rights flow from NLRA §7's guarantee of the right of employees to act "in concert for mutual aid and protection." Denial of this right violates NLRA §8(a)(1). While this case applies to workers in the private sector, some public employees have similar rights, and the rules vary from state to state. The Massachusetts Department of Labor Relations has adopted the Weingarten rules for public employees covered by Massachusetts General Laws, Chapter 150E.

Weingarten rights apply during investigatory interviews when a supervisor questions an employee to obtain information that could be used as grounds for discipline. When an employee believes such a meeting may lead to discipline, he/she has the right to request union representation. These basic Weingarten rights stem from the Supreme Court's decision:

The employee must request representation before or during the meeting.

After an employee makes the request, the supervisor has these choices:

- grant the request and wait for the union representative's arrival;
- deny the request and end the meeting immediately; or
- give the employee the choice of either ending the meeting or continuing without representation.

If the supervisor denies the request and continues to ask questions, the employee has a right to refuse to answer. In addition, the supervisor is committing an unfair labor practice.

### **Employee Rights in "Weingarten" Meetings**

Beware that management is not obligated to inform employees of their Weingarten rights – employees must ask for them. Unlike Miranda rights – where police are required to tell a suspect of his/her right to an attorney, etc. – employees must ask for their Weingarten rights. Some locals provide members with a wallet-sized card they can keep

with them. If they find themselves in a meeting they believe may lead to discipline, they can read or hand the card to the supervisor.

### **Building Representative Rights in "Weingarten" Meetings**

- ✓ Ask to be informed of the purpose of the meeting.
- ✓ Meet with the employee before the supervisor begins questioning the employee.
- ✓ If necessary, request clarification of a question before the employee responds.
- ✓ Offer advice to the employee on how to answer a question.
- ✓ Provide additional information to the supervisor after the meeting is over.

If called into a "Weingarten" meeting, you should also:

- 1) take detailed notes on the questions asked and the answers given during the meeting;
- 2) help the employee remain calm during the meeting, and remind the employee to keep answers short and truthful and not volunteer additional information.

### **The Duty of Fair Representation**

When the union wins a representation election, it gains a special status – it is certified as the exclusive representative of all employees in the bargaining unit. The union has the authority to negotiate and administer the contract and address issues concerning the terms and conditions of employment.

With this status comes a responsibility known as the duty of fair representation. This duty is not found in a particular law or statute; rather, it is the result of several court decisions that were handed down through the years. Simply put, the union has the duty to fairly represent all employees in the bargaining unit, regardless of whether they are members, agency fee payers or non-members. The duty of fair representation is covered by Massachusetts General Laws, Chapter 150E.