

WEINGARTEN RIGHTS

(The right to union representation when being questioned)

Under the Supreme Court's Weingarten decision, 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 cannot be punished for making the request.

Rule 2: After the employee makes the request, the employer must choose from among three options.

The Employer must either:

- Grant the request and delay questioning until the union representative arrives and has a chance to consult privately with the employee.
- Deny the request and end the interview immediately.
- Give the employee a choice of
 - 1) having the interview without representation or
 - 2) ending the interview.

Rule 3: If the employer denies the request for union representation, and continues to ask questions, it commits an unfair labor practice and the employee has a right to refuse to answer. The employer may not discipline the employee for such a refusal.

One of the most vital functions of a union steward is to prevent management from intimidating employees. Nowhere is this more important than in closed-door meetings when supervisors or guards, often trained in interrogation techniques, attempt to coerce employees into confessing to wrongdoing.

In 1975, in *NLRB v. J. Weingarten, Inc.* the US Supreme Court announced the rights of employees in the presence of union representatives during investigatory interviews. Since that case involved a clerk being investigated by the Weingarten Company, these rights have become known as Weingarten Rights.

Weingarten Rights have since been extended to non-union workplaces. The NLRB ruled July 10, 2000, in *Epilepsy Foundation of Northeast Ohio*, Slip Opinion No. 331-92, Case No. 8-CA-28169, that Weingarten Rights also applies to non-union workplaces. However, in June 2004 (341 NLRB No. 148 (2004)), in *IBM Corp. and Kenneth Schult*, the National Labor Relations Board reversed themselves and decided by a 3-2 vote that non-unionized employees are not legally entitled to have a coworker present during an investigatory interview that the employee reasonably believes might result in discipline.

In an important decision for employers, the National Labor Relations Board recently held in *IBM Corp.*, 341 NLRB No. 148 (2004) that nonunionized employees no longer have the right to have a coworker with them at an investigative interview, even when the employee reasonably believes the investigation might result in disciplinary action.