



YOUR WEINGARTEN RIGHTS

Right to Union Representation & Role of Union Representation In Disciplinary Actions

In *NLRB v. Weingarten, Inc.*, the U.S. Supreme Court held that an employee has the right under the National Labor Relations Act (NLRA) to union representation at an investigatory interview which the employee reasonably believes may result in disciplinary action. *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

1. When is Protection Afforded?

Protection under Weingarten is afforded when an employee reasonably believes that disciplinary action may be the result of his/her meeting with the employer's representative in an investigatory interview and where the employee requests representation.

- a. What is a "reasonable" belief is measured by objective standards, not the subjective motivations of the employee, based upon a reasonable evaluation of all the surrounding circumstances.
- b. An employee can participate in an interview without a representative if he/she foregoes his/her right to request one.
- c. Ordinarily, once a valid request for union representation is made, the burden is on the employer to either grant the request or offer the employee the choice between continuing the interview unaccompanied by a union representative or having no interview at all.
- d. An employer has no obligation to continue with an investigative interview once union representation is requested. It does not have to justify its refusal and can continue its investigation without questioning the employee and the employee then foregoes any benefits that may be derived from participating in an interview.

2. What Role Does the Union Representative Play?

- a. The representative's role is to assist the employee and the representative may do so "by attempting to clarify the facts or suggest other employees who may have knowledge of them." *Weingarten*, 420 U.S. 251 (1975).
- b. A representative oversteps his/her bounds in instructing an employee not to answer a question or questions during an interview. An employer may "eject" a representative who engages in such behavior because "it is within an employer's legitimate prerogative to investigate employee misconduct in its own facilities without interference from union officials." *Weingarten*, 420 U.S. 251 (1975).