

Members Rights

Your collective bargaining agreement contains many rights and protections, but as a Union Member you also have legal rights that are not in the agreement as well as benefits and resources that you should be aware of.

Weingarten Rights- The Right to Representation

(Applies to Union members employed in both the public and private sectors)

- Union members are entitled to be accompanied by a Union representative during investigatory interviews.

In the *NLRB vs. Weingarten*, 420 US 251 (1975) case, the U.S. Supreme Court held that, upon request, employees represented by a union have a right to the presence of union representative during “investigatory interviews” conducted by the employer. The rights established in that case are commonly known as “Weingarten” rights.

- What is an Investigatory Interview?

An investigatory interview occurs when a supervisor questions an employee to obtain information which could be used as a basis for discipline or asks an employee to defend his or her conduct. The test is whether an employee has a “reasonable belief” that discipline could result from what he or she says during the interview. If so, the employee has a right to be accompanied by a union representative.

- Weingarten Rules and Employee Rights

1. The employee must make a clear request for union

representation. Unlike the *Miranda* warnings which police must give before making an arrest, an employer does not have to inform the employee of their right to make this request.

2. Once the employee requests union representation, the employer has three options:

- a) Grant the request and delay questioning until the union representative arrives and has a chance to consult privately with the employee; or
- b) Deny the request and end the interview immediately; or
- c) Give the employee the choice of (i) having the interview without representation, or (ii) ending the interview.

3. If the employer denies an employee's request for representation, the employee may refuse to answer any questions. Continuing to ask questions after denying representation is an unfair labor practice under the National Labor Relations Act.

• Rights of Union Representative or Shop Steward

1. When the union representative or steward arrives, the supervisor must inform the union representative or steward what the interview is about.

2. The union representative or steward must be allowed to speak privately with employee before the interview begins.

3. The union representative or steward has the right to speak during the interview. However, the union representative or steward does not have the right to bargain over the purpose of the interview or to obstruct the interview.

4. The union representative or steward can help the worker by asking that the supervisor to clarify a question.

5. When the interview ends, the union representative or steward can provide additional information to the supervisor such as extenuating or mitigating circumstances.

If the employer complies with Weingarten Rights, a union representative or steward may not tell an employee not to answer a question or to give false answers. An employee can be disciplined for refusing to answer questions after the employer has complied with a request for union representation.

Garrity Rights – The Fifth Amendment

(Applies to Interrogations of public safety employees)

Public employees have certain constitutional rights that apply in their employment that may not apply to private employees. For example, in *Garrity V. New Jersey*, 385 U.S. 493 (1967) the Supreme Court held that statements obtained in the course of an investigatory interview under the threat of termination from public employment cannot be used as evidence against the employee in subsequent criminal proceedings. If, however, you refuse to answer questions after you have been assured that your statements cannot be used against you in a subsequent criminal proceeding, the refusal to answer questions thereafter may lead to the imposition of discipline for insubordination. Further, while the statements you make may not be used against you in a subsequent criminal proceeding, they can still form the basis for discipline on the underlying work related charge.

To ensure that your Garrity rights are protected you should ask the following questions:

- a)** If I refuse to talk, can I be disciplined for the refusal?
- b)** Can that discipline include termination from employment?
- c)** Are my answers for internal and administrative purposes only and not to be used for criminal prosecution?

If you are asked to provide a written statement regarding the

subject of the interview, the following statement should be included in your report:

"It is my understanding that this report is made for internal administrative purpose only. This report is made by me after being ordered to do so by my supervisor. It is my understanding that refusing to provide this report could result in my being disciplined for insubordination up to and including termination of employment. This report is made pursuant to that order and the potential discipline that could result for failing to provide this report."

Loudermill Rights – Most public employees have a constitutional right to a pre-termination "hearing"

In another decision announcing a Constitutional right for public employees not possessed by private employees, the Supreme Court in *Cleveland Board of Education v. Loudermill*, 470 US 532 Ed 2d 494, (1985) held that most public employees are entitled to a hearing before they are discharged. However, the "hearing" is not a full evidentiary hearing and need not include the opportunity to cross examine your accusers. All that is required is:

1. Oral or written notice of the charges and time for hearing; and
2. An explanation of the employer's evidence; and
3. An opportunity to present "his or her side of the story."

Since the issuance of the Loudermill decision, the lower courts have strictly limited the remedy for Loudermill violations. Specifically, an employee deprived of his

Loudermill rights in not entitled to reinstatement if the employer can prove that there was just cause for the discharge.