



NOTE: A form is available on Local 94's Web Page that can be filled out and presented to your supervisor notifying them that you are exercising your Weingarten Rights in advance.

Know Your Rights

WEINGARTEN RIGHTS

EMPLOYEE'S RIGHT TO UNION REPRESENTATION

The rights of unionized employees to have present a union representative during investigatory interviews were announced by the U. S. Supreme Court in a 1975 case (NLRB vs. Weingarten, Inc. 420 U.S. 251, 88 LRRM 2689). These rights have become known as the Weingarten rights.

Employees have Weingarten rights only during investigatory interviews:

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.

If an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has the right to request union representation.

Management is not required to inform the employee of his/her Weingarten rights; it is the employees responsibility to know and request.

When the employee makes the request for a union representative to be present management has three options:

1. it can stop questioning until the representative arrives.
2. it can call off the interview or,
3. it can tell the employee that it will call off the interview unless the employee voluntarily gives up his/her rights to a union representative (an option the employee should always refuse.)

Once you've asked for union representation, any attempt by management to continue asking questions before a union representative gets there is ILLEGAL. If supervisors pressure you by telling you that "you're only making things worse for yourself" by asking for union representation, that's against the law too.

Employers will often assert that the only role of a union representative in an investigatory interview is to observe the discussion. The Supreme Court, however, clearly acknowledges a representative's rights to assist and counsel workers during the interview.

The Supreme Court has also ruled that during an investigatory interview management must inform the union representative of the subject of the interrogation. The representative must also be allowed to speak privately with the employee before the interview. During the questioning, the representative can interrupt to clarify a question or to object to confusing or intimidating tactics.

While the interview is in progress the representative can not tell the employee what to say but he may advise them on how to answer a question. At the end of the interview the union representative can add information to support the employee's case.

What to Say if Management Asks Questions That Could Led to Discipline:

"If this discussion could in anyway lead to my being disciplined or terminated, or affect my personal

working conditions, I request that my union representative, officer, or steward be present at the meeting. Without representation, I choose not to answer any questions."

Know the limits:

Just as it's important to know what your Weingarten rights are, it is also important to know the limits. You are not entitled to have a steward present every time a supervisor wants to talk to you.

Remember, if the discussion begins to change into questioning that could lead to discipline, you have the right to ask for representation before the conversation goes any further. If you are called into the supervisor's office for an investigation, you can't refuse to go without your steward. All you can do is refuse to answer questions until your union representative (or steward) gets there and you've had a chance to talk things over.

Recent Developments in the Law

Handling Harassment Claims in a Union Setting

Responding to an employee's complaint that he or she is being sexually harassed on the job is daunting in its own right. When the alleged offensive behavior occurs in a union shop, the situation is even more volatile. This article will discuss the impact of federal anti-discrimination law on collective bargaining agreements and examine the obligations of the employer and the labor union in various scenarios.

Once sexual harassment has been alleged, employers must promptly launch a comprehensive investigation into the charges. At the very least, that means interviewing the purported victim and alleged harasser, as well as coworkers who may have witnessed inappropriate conduct.

As the U.S. Supreme Court held in 1975 in *NLRB v. J. Weingarten, Inc.*, efforts to preserve the confidentiality of sexual harassment inquiries do not exclude the lawful role of unions in representing their members. Assuming the accused is a union member, during the employer's investigative interview, the accused is entitled to be accompanied by a union representative if he or she believes in good faith the interview may result in disciplinary measures. However, the alleged harasser, not the union agent, must answer the employer's questions.

The National Labor Relations Act authorizes the union to review relevant information obtained by the employer during the investigative phases so the union can gauge whether to file a grievance on behalf of the accused. Employers, for example, must disclose to the union the names of the individuals questioned; though they are not bound to turn over the witnesses' statements.

Generally, discipline meted out against unionized employees who sexually harass coworkers is sustained by arbitrators as in the 1991 federal decision, *Robinson v. Jacksonville Shipyards*.

Irrespective of whether a company's sexual harassment complaint procedures comply with the collective bargaining agreement, an employer is obligated under Title VII to "take all steps necessary to prevent sexual harassment." Consequently, any collective bargaining agreement that impedes an employer's ability to eliminate sexually offensive behavior may be unenforceable and contrary to public policy as expressed in federal and state laws and regulations. The U.S. Court of Appeals for the Second Circuit so ruled in *Newsday v. Long Island Typographical Union* in 1990.

Like employers, unions may be liable for sexual harassment in the workplace. Certainly, a union is responsible for preventing and taking remedial action when a representative, such as a workplace delegate or shop steward, intentionally engages in sexual misconduct with a coworker or vendor, particularly if the union had notice of the offensive behavior and took no corrective action. Title VII culpability rarely attaches to a union for its acquiescence in the face of inappropriate behavior against a member by his or her employer. By the same token, a union cannot refuse to file a legitimate sexual harassment grievance against an employer at a member's behest based on a reason that discriminates against the member. Cases abound, for instance, in which a male shop steward failed to intercede when coworkers verbally and sexually abused a unionized female employee.

Perhaps the most challenging quandary confronting unions in the sexual harassment arena involves the scenario in which both the accuser and the accused are covered by the collective bargaining agreement. Union owes a duty of fair representation both to the victim and to the alleged harasser. If the purported victim alleges a breach of the duty of fair representation based on the union's failure adequately to investigate his or her harassment charges or its refusal to file a grievance, the union must demonstrate its actions were based on a just and impartial consideration of the company's employees' interests and were not a product of political favoritism or personal malice. To prevail on his or her breach of duty of fair representation claim, the victim needs to show:

- The employer breached the collective bargaining agreement
- The union did not redress the breach
- The union's inaction violated its duty of fair representation
- The union's motivation was gender-based discrimination

Some proof is required that the union's decision not to pursue a grievance was deliberately discriminatory.

Unions often develop practices for handling situations in which they are bound to members on both sides of a sexual harassment claim. Options include retaining an outside consultant to represent one of the parties or employing locals and regional union agents to represent the accused and the accuser to overcome any conflict of interest posed by dual representation by one union official.

Like employers, unions can take proactive steps to curtail sexual harassment. Such measures might include sponsoring sexual harassment prevention training to union staff and rank and file members and creating guidelines for swift processing of harassment complaints.

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