



## Unionism and the Law

### WEINGARTEN RIGHTS

As a steward, you have a right to be present and to represent an employee in your bargaining unit at an investigatory interview with the employer when the employee reasonably believes that the interview may lead to disciplinary action and on the basis of that belief, requests that his/her steward be present while that interview is conducted. This right was established by the United States Supreme Court in the case of *NLRB v. Weingarten*, 420 U.S. 251.

There are several important elements to this right:

**First**, an employee must request that a union representative be called into the meeting with management. In this capacity, the union representative is safeguarding not only the individual's particular interests, but also the interests of the entire bargaining unit to make certain that the employer does not initiate or continue a practice of imposing discipline unjustly.

**Second**, the employee being interviewed must have a reasonable belief that the discipline will result from the investigatory meeting.

**Third**, the employee has the right to know the subject of the meeting and to consult with his/her union representative prior to the meeting; and is entitled to caucus with his/her steward during the meeting in order to seek the steward's advice and counsel. The steward has the right to participate in the meeting, and to not be forced to sit silently as a passive witness.

**Fourth**, no such employee would necessarily have the right to demand the steward or other union representative of his/her impromptu choice (at that point during the interview when it becomes apparent to the employee that the "interview" is disciplinary in nature). That union representative would be designated by the bargaining agent ("the Union").

**Fifth**, the employee would be well advised not to refuse to attend any such interview, even if his/her request for union representation is denied by the employers representative (i.e. supervisor, foreman, etc). Instead, the employee should be advised to attend the interview, but while in attendance, to repeatedly insist upon his/her right to have a union representative present throughout. If the employee's persistence fails to persuade the management representative to accede to the employee's request to have a union representative present at the interview, then the employee should refrain from answering any questions put to him/her during the interrogation and the union should file a grievance or an unfair labor practice.

## GRIEVANCE RIGHTS

- ▶ Actual rights of employees are governed by the U.S Constitution, federal and state laws, judicial opinions and precedents, personnel policies and employee contracts.
- ▶ Generally, all employees have the right to due process.
- ▶ The basic principles of the *Duty of Fair Representation* are the right and responsibility of both the employee and the union.
  - The union may not discriminate against members and non-members of the union, nor on the basis of race, creed, sex, political belief or opposition to the elected leadership of the union or its parent organizations.
  - The union is responsible for making a full, good faith effort to determine the merits of a bargaining unit member's complaint.
  - The union can be held responsible for negligent acts in enforcing the contract and processing grievances which cause a member of the bargaining unit loss of benefits or work status under the contract.
  - It is up to the discretion of the union to decide whether or not a case should go to arbitration (because of legal costs involved and possible negative decision from an arbitrator).
- ▶ Examples of *Duty of Fair Representation* violations include:
  - Failure to process an employee's grievance for any of the following reasons: the employee's efforts to bring in another union; the employee does not pay union dues; the employee's opposition to the incumbent union leadership; the employee's sex, race, color, national origin, religion, age, sexual orientation, etc.
  - Failure to investigate a grievance
  - Refusal to process a grievance, absent any investigation
  - Missing a grievance procedure time limit, without explanation
  - Failure to notify an employee of a settlement offer
  - Failure to notify an employee that a grievance will not be taken to arbitration, thereby leading the grievant to reject a settlement offer that he/she might have otherwise have accepted
  - Failure to prepare for arbitration