

EMPLOYEE'S RIGHT TO UNION REPRESENTATION

The rights of 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.)

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 right 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.

On July 10, 2000, in one of the most significant labor decisions of the Clinton era, the National Labor Relations Board extended to nonunion employees the right, already held by union employees, to bring along a co-worker to a disciplinary meeting with an employer.

While a challenge is likely, the appeals process could take months or years. Still, it is unclear whether the decision will result in big changes in the American workplace, where roughly 85% of workers aren't represented by a union.

The five-member board overruled a decision in *Epilepsy Foundation of Northeast Ohio and Arnis Borgs and Ashrafal Hasan* ([331 NLRB No. 92](#)). The administrative law judge in that case said a 1975 Supreme Court decision, *NLRB v. Weingarten*, [420 US 251](#), granted union employees the right to bring a co-worker to disciplinary meetings with employers. But, citing NLRB precedent, he also ruled that nonunion employees don't have so-called *Weingarten* rights.

NLRB members John C. Truesdale, Sarah M. Fox and Wilma B. Liebman said the precedent "misconstrued the language" of *Weingarten*. While the *Weingarten* case involved a union representative, the majority decided that the court's ruling was based on a section of employment law that says employees have the right to "mutual aid or protection."

"This rationale is equally applicable ... where employees are not represented by a union," the decision states.