

REPRESENTING MEMBERS IN INVESTIGATORY MEETINGS

Common Questions

1. If I see a worker being interviewed in a supervisor's office, can I demand to attend the meeting?

Yes. A Steward has a protected right to demand admission to a *Weingarten* interview. However, once the request is made, the employee being interviewed must indicate a desire for your presence. If the employee states that s/he wishes to be interviewed alone, the Steward must leave.

2. An employee was summoned to an interview with his supervisor and advised of his rights to Union Representation. The supervisor went on to say, however, "You can have a Steward, but if you do, I will have to bring in the administrator and you know how temperamental he is. If we can keep it at the level we're at, things will be a lot better for you." Violation?

Yes. The supervisor is threatening greater discipline to coerce the employee into abandoning their *Weingarten* rights. This is an unfair labor practice.

3. Can a worker insist on the presence of a lawyer before answering questions at an investigatory interview?

No. *Weingarten* rights apply only to the presence of Union Representatives.

4. If the employer allows the presence of an attorney, should the Union oppose it?

It's the Steward's call. If the employee being investigated is facing legal charges, it might be helpful to have the attorney there. If an attorney is present, s/he and the employee should be advised that the Steward is the employee's advocate in this process.

5. If a worker's Steward is out sick, can the worker insist that the interview be delayed until the Steward is available?

The employee can ask, but management does not have to delay an investigation if other Union Representatives are available to assist the employee at the interview.

6. If the employer calls a meeting to lecture workers about job performance, do the employees have a right to demand the presence of a Union Representative before attending the meeting?

No. Holding a meeting on work time which does not involve interrogation is not an investigatory meeting. There is no right to a Steward, unless the employer begins asking questions of employees in a manner that creates a reasonable fear of discipline.

7. If the employer violates an employee's right to representation during an investigation, will the discipline be rescinded?

Probably not. It can be argued as part of the just cause argument of fair and proper investigation, but it is unlikely that an arbitrator will sustain the grievance on that issue alone.

8. Does the Steward have the same legal status in an investigation as in a grievance meeting?

No. The equality principle does not apply.

9. If the Steward feels that the employer is using "rubber hose" tactics (unreasonable, threatening interrogation), can s/he terminate the meeting?

Probably unwise to do so. The employee must cooperate with the investigation. The Steward can try to intervene to change the "tone" and keep the questions appropriate. Unless the tactics are so threatening that the employee feels unsafe, the Steward should try to get him/her through it as calmly as possible.

10. How should a Steward respond if the investigator does not allow the Steward to ask questions or caucus with the employee?

Remind the investigator that the employee has these rights under the *Weingarten* law.

11. Can either side bring a tape recorder to the interview?

As long as a tape or transcript is provided to the "other side," either party should be allowed to tape the interview. The employer may object, in which case the Steward and employee will need to decide that since it is the employer's meeting, wisdom might dictate that thorough notes might be a better alternative.

12. How does a Steward know where to draw the line on questions?

A member has the right to Union Representation, either in person or by phone interview. Locals should, however, take measures to find and train enough employees to be Stewards that can handle investigations. Some Locals use "junior" Stewards, "information" Stewards, or Steward "advocates" to handle investigations.

13. What is a reasonable time to conduct an investigation? Can the employer take an undetermined amount of time and leave it open indefinitely?

Most contracts do not specify a time frame within which investigations must be completed. A Steward should check the collective bargaining agreement as well as employer policies.

14. What rights does the Steward have to the interview notes?

The Steward only has rights to interview notes once discipline has been administered.

15. How much does the employer have to inform you beforehand?

The supervisor or manager must inform the steward of the subject matter of the interview.

16. Does a Steward have a right to be present at other legal investigations where someone other than the employer is investigating (vulnerable adult interviews, licensing agencies)?

The Union takes the position that the employee has a right to Union Representation if: (1) there is anyone attending that is representing the employer and/or (2) the investigatory notes may be used in the decision to discipline.

17. Is communication between the employee and the Steward "protected"?

NO! The employee does not have protection for confidential conversations with a Steward in the same way that a client does with an attorney. What this means is that if a Steward was issued a subpoena to testify against an employee, the Steward cannot claim that it is privileged information. The Steward would have to testify to anything or s/he might be charged with a crime. It is important that they be advised that the communication with the Steward is not privileged.