

Stewards Rights During Investigatory (Weingarten) Interviews

Employers sometimes assert that the only function of a steward during an investigatory interview is to observe the discussion; in other words, to be a silent witness. This is incorrect. Sometimes the employer may be concerned that interview statements made by an employee may be "polluted", or that the interviewee could be coached by the steward and the truth will be harder to find.

The fact is, a steward must be allowed to advise and assist the employee in presenting the facts. The role of the steward is to be an advocate of the employee during the interview process so that a potential situation of coercion and intimidation are not encountered. When the steward arrives at the meeting:

1. The supervisor or the interviewer must inform the steward of the subject matter of the interview: in other words, the type of misconduct being investigated. 1
2. The steward must be allowed to have a private meeting with the employee before questioning begins. 2
3. The steward can speak during the interview, but cannot insist the interview be ended. 3
4. The steward can object to a confusing question and can request that the question be clarified so that the employee understands what is being asked. 4
5. The steward can advise the employee not to answer questions that are abusive, misleading, or harassing. 5
6. When the questioning ends, the steward can provide information to justify the employee's conduct. 6

Remember, an employer does not have to inform the employee that he or she has a right to union representation!!!!

That is why it is important for an employee when called into a meeting with management ask, "If this discussion could in any way lead to me being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative or steward be present at this meeting. Until my representative arrives, I choose not to participate in this discussion."

LOCKER SEARCH

If management orders an employee to open a locker, can the employee insist on a steward being present?

No. A locker search is not an investigatory interview. 10

TELEPHONE INTERVIEWS

If a supervisor calls an employee at home to question the employee about missing tools, for instance; does the employee have to answer questions?

No. *Weingarten* applies to telephone interviews. If the employee fears discipline, the employee can refuse until being able to consult with a union representative. 11

STEWARD UNAVAILABLE

If a worker's steward is off sick, and there is another union representative available, can the interview be delayed until the steward arrives?

Usually, no. Management does not have to delay the investigation if another union representative is available to assist the employee. 12

PARTICULAR REPRESENTATIVE

If an employee asks to be represented by a committee person, or chief steward instead of the work group steward, must management comply?

Usually, yes. If two representatives are equally available, the request must be honored. 13

QUESTIONS ABOUT OTHER EMPLOYEES

If a worker is summoned to a meeting about the role of others in potential wrong doing, can the worker insist on assistance from a union representative?

Yes. Although the employee may not be involved in any wrong-doing he/she risks discipline if he/she refuses to inform on others or admits that he/she was aware of the situation.

STEWARDS REQUEST

If a steward sees a worker being questioned in a supervisor's office, the steward can insist on admission to a meeting that appears to be a *Weingarten*

Interview. 14 If the interview is investigatory, the employee must be allowed to indicate whether or not he/she desires the steward's presence. 15

OBSTRUCTION

If the company is interviewing employees at the plant about drug use, for instance; can the steward tell the employees not to answer questions?

A union representative may not obstruct a legitimate investigation into employee misconduct. If management learns of such orders, the steward can be disciplined. 16

INTERROGATION OF A STEWARD

If a steward is called into the supervisor's office to discuss his/her work, or is subject to any other investigatory interview, the steward is entitled to the same rights to assistance as other employees. 17

HOW TO USE THE FOOTNOTES

NLRB decisions are published in a reporter called *Decision and Orders of the National Labor Relations Board* abbreviated NLRB. First number is the volume; second number is the page.

NLRB decisions also appear in a reporter called the *Labor Relations Reference Manual (LRRM)*. The first number is the volume, followed by the page number.

U.S. Sup Ct., refers to United States Supreme Court decisions, followed by the year in which the decision was issued.

- 1 *Pacific Telephone and Telegraph Co.*, 262 NLRB 1048, 110 LRRM 1411 (1982)
- 2 *U.S. Postal Service*, 303 NLRB 463, 138 LRRM 1339 (1991) (steward may be issued discipline for repeatedly interrupting interview, profanity, and pounding on the desk).
- 3 *Southwestern Bell Telephone Co.*, 251 NLRB 612, 15 LRRM 1246 (1980)
- 4 *U.S. Postal Service*, 288 NLRB 864, 130 LRRM 1184 (1988)
- 5 *New Jersey Bell Telephone Co.*, 308 NLRB 277, 141 LRRM 1017 (1992)
- 6 *NLRB v J. Weingarten, Inc.* 420 U.S. 251, 88 LRRM2698 (U.S. Sup Ct. 1975)
- 10 *Walnut Hill Convalescent Home*, 114 LRRM 1255 (advice memorandum 1983)
- 11 *Pacific Southwest Airlines Inc.*, 242 NLRB 1169, 1975-76, 101 LRRM 1366 (1979)
- 12 *Coca-Cola Bottling Co.*, 227 NLRB 1276, 94 LRRM 1200 (1977)
- 13 *Consolidation Coal Co.*, 307 NLRB 976, 977-78, 140 LRRM 1248 (1992)
- 14 *ILG UW v Quality Mfg. Co.*, U.S. 276, 88 LRRM 2698 (U.S. Sup. Ct. 1975)
- 15 *Appalachian Power Co.*, 233 NLRB 931, 106 LRRM 1041 (1980)
- 16 *Manville Forest Product Corp.*, 2691 NLRB 390, 115 LRRM 1266 (1984)
- 17 *Keystone Consolidated Industries., Inc* 217 NLRB 995, 89 LRRM 1192 (1975)