

WEINGARTEN RIGHTS: THE RIGHT TO A UNION REPRESENTATIVE

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Any time management questions an employee to obtain information and the employee has a reasonable belief that discipline may result from what he or she says, the employee has a right to request the presence of a union representative before or during the interview. This is called the Weingarten right, named after the Supreme Court decision which held that an employee has a right, under Section 7 of the National Labor Relations Act, to have a knowledgeable union representative present whenever he or she is interviewed by a supervisor, Postal Inspector, or other management official, and the employee has reasonable cause to believe that discipline may result from that interview.

Once an employee, who is being questioned and who reasonably believes that discipline may result, makes a request for union representation, the employer may not simply continue the interview. Instead, in these circumstances, the employer must either allow a union steward or other representative to attend the interview; stop the questioning or cancel the interview; or ask the employee if no union representative can be located, to continue the interview unrepresented. The supervisor or manager may not simply continue the interview once the employee has asked for representation. If the employer goes ahead with the interview, the employer has committed an unfair labor practice.

The most important aspect of Weingarten is that the mail handler loses his or her right to union representation if the mail handler does not assert it. The Postal Service is under no obligation to inform the mail handler about his or her right to representation. The Weingarten right belongs to the individual employee, and not to the union. A shop steward cannot exercise Weingarten rights on an employee's behalf. It is important, therefore, that every mail handler know about these Weingarten rights in advance, before they have to be asserted. Once the union representative arrives at the interview, the steward is allowed to speak with the mail handler

privately before any questioning begins or continues. The employer must inform the steward of the type of misconduct being investigated. Furthermore, the steward is allowed to speak during the interview to ensure, among other things, that the questions being posed are not confusing to the employee. In addition, after questioning is completed, the steward may provide information to the supervisor or manager to justify or explain the mail handler's conduct, or to

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suggest other potential witnesses who may have knowledge about what occurred. At the same time, when a union steward is called into an investigatory interview under Weingarten, the employer has no duty to bargain with the union representative. The role of the steward during a Weingarten interview therefore differs from a formal grievance meeting, where the management representative is required to bargain with the union.

Finally, it is useful to know some common situations in which Weingarten rights do not apply. First, the Weingarten rule does not apply to job discussions held under Article 16.2. Because such discussions are not disciplinary and must be held in private between the employee and the supervisor, a mail handler does not have Weingarten representation rights during an official discussion. Second, employees generally do not have the right to union representation during fitness-for-duty examinations. Third, if a mail handler is called in for questioning as a possible witness, no Weingarten rights attach if management states that the mail handler being questioned is not under investigation. And finally, because the

WEINGARTEN RIGHTS



(U.S. Supreme Court)

“If this discussion / interview / interrogation {with management, Office of Inspector General (OIG) or Postal Inspectors} could in any way lead to my being disciplined or terminated from employment, or affect my personal working conditions, I respectfully request that my Union Steward or other Representative of the National Postal Mail Handlers Union be present at the meeting. Without representation, I choose not to answer any questions.”

Weingarten rule applies only when the meeting is an investigatory interview — that is, when management is searching for facts and trying to determine the employee's guilt or to decide whether or not to impose discipline — the employee does not have a right to representation under Weingarten when management calls in a mail handler solely for the purpose of issuing disciplinary action. The right to steward representation does not apply when a supervisor simply is handing a letter of warning to a mail handler, without asking any questions or engaging in other conversation intended to elicit verbal responses useful to a management investigation. Each and every mail handler has the right to union representation during an investigatory interview, and all mail handlers should be asserting those rights whenever applicable. It therefore is essential that union stewards are familiar with these rights, and that stewards educate all members of the NPMHU about Weingarten and its implications.

During an interview with a postal inspector or OIG agent, the employee may be given additional warnings.

These are the Garrity and Kalkines warnings:

A Garrity warning advises suspects of their criminal and administrative liability for any statements made but also advises suspects of their right to remain silent on any issues that may implicate them in a crime.

A Kalkines warning requires employees to make statements and cooperate even if it could lead to being disciplined or to being discharged, but it provides criminal immunity for their statements.

The difference between the two warnings is subtle but important. Under Kalkines, the Postal Service is requiring answers to its investigatory questions but waiving its right to use those answers in a later criminal proceeding. Under Garrity, the Postal Service is waiving its right to require answers to its investigatory questions, and its right to discipline the mail handler for remaining silent, but the Postal Service or other government authorities remain free to use any statements voluntarily made by the employee in a subsequent criminal proceeding.

If you have any questions regarding these rights and warnings, contact your local union representative.