

## Questioning a Bargaining Unit Employee (Weingarten Rights)

### What are Weingarten rights?

A union's right to be present and assist a bargaining unit employee during an investigative interview, if the employee has a reasonable belief that he/she may be disciplined because of his/her responses to the investigative interview, and the employee requests union representation.

*Although 5 U.S.C. §7114(a)(2)(B) of the labor relations statute provides for the right to union assistance during an investigative interview, the term "Weingarten" is derived from a private sector case decision issued by the National Labor Relations Board: NLRB v. J. Weingarten, Inc., 420 U.S. 252 (1975).*

### Am I required to inform employees of their Weingarten rights before interviewing them?

Unless an applicable collective bargaining agreement (CBA) requires you to do so, you are not required to inform employees of their Weingarten rights directly prior to an interview.

### Does a bargaining unit employee have to specifically say that he/she is invoking "Weingarten" rights?

No. If an employee demonstrates a desire for assistance or representation during the interview—union or non-union—the agency is obligated to inquire if the employee would like a union representative to be present before proceeding.

### What are a supervisor's obligations when a bargaining unit employee invokes Weingarten rights?

Unless your CBA prescribes otherwise, a supervisor may elect to do one of the following:

- discontinue the interview until the union is able to be present,
- end the interview indefinitely, or
- give the employee the option of continuing without a union representative or foregoing the benefit of the interview. *If the employee elects to continue without representation, get it in writing before proceeding.*

Alternatively, if certain that the employee will not be disciplined as a result of questioning, a supervisor may advise the employee of such and direct the employee to continue with the interview. *Statements obtained as a result may not be used against the employee.*

### What role may the union play in an investigative interview?

A union representative may ask you to clarify questions that you are asking the employee, help the employee present the facts in his defense, and "consult privately" with the employee.

However, you may insist on the employee's own account of the events, and a union representative may not obstruct an investigation.

### What if a supervisor violates an employee's Weingarten rights?

The agency may be subject to an unfair labor practice (ULP) charge, which may be accompanied by a variety of sanctions issued by the Federal Labor Relations Authority (FLRA).

Alternatively, the agency may be subject to sanctions issued by an arbitrator, if a bargaining unit employee or the union files a grievance under the negotiated grievance procedure.

### Where can I go for additional assistance?

If you have questions regarding labor relations matters, please contact the WHS Labor and Management Employee Relations Division at 703-699-1824.