

Read it and Zip it!

Your contract provides you with the right to representation during an investigation. It has routinely happened that an employee has been investigated and a steward has not been offered. When questioned about the contract violation, the reply is likely to be something like "We were just trying to determine what happened." Determining what happened is an investigation!

If you are called in or questioned in any way about your conduct or work activities, you need to be aware of your rights to representation and be aware that the answers that you give may be used against you.

When questions are part of an investigation, the affected employee has what are called *Weingarten rights* -- or the right to representation.

Weingarten rights

Any employee being investigated by her or his employer has the right to representation -- in an organized workplace that means union representation. This principle was established in 1975 by the U.S. Supreme Court in NLRB v. Weingarten, Inc.

- Weingarten rights help protect employees under investigation from over-zealous employers and help ensure that employees have access to a union steward to know what their rights and options are.
- Weingarten rights must be requested by the employee -- unless specified by contract the employer does not have to offer representation to the employee.
- Once requested, the employer is obligated to provide representation before proceeding with the questioning. If the employer refuses the employee can refuse to answer questions (with some accompanying peril) or repeatedly request representation and answer only under protest.
- Weingarten rights only apply to "investigatory interviews."

This statement is on the back of the MSEA business cards, read it and ZIP IT!!

I believe this discussion could lead to my being disciplined. I therefore request that my union representative be present to assist me at the meeting. I further request reasonable time to consult with my union representative regarding the subject and purpose of the meeting. Please consider this a continuing request; without representation, I shall not participate in the discussion.

What is an 'investigatory interview'?

Weingarten rights only apply to "investigatory interviews." The key to determining whether a meeting is an investigation is whether a "reasonable person" might believe that the questions asked might possibly result in discipline for the employee or some other employee in the future. The language is important: if an employee believes or is even nervous about questions that might result in potential discipline, s/he should request union representation.

Investigatory interviews often relate to subjects such as:

- absenteeism
- damage to company property
- drugs and alcohol use
- falsification of records
- tardiness
- theft
- violation of safety rules
- accidents
- fighting
- insubordination
- sabotage
- work performance (if it might result in discipline)
- vulnerable adult complaints

Investigatory interviews do not normally include:

- casual conversations
- annual job reviews (unless they can result in discipline)
- handing out of discipline, as opposed to an investigation
- staff meetings
- briefings on new procedures or work rules

When in doubt, it never hurts to ask for your steward.