
# Union Rights Every Member Should Know

## 2025 OHIO RANK & FILE EDUCATION CONFERENCE

# *Yes, You Have* RIGHTS!

Weingarten Rights are unionized employees' rights to have a union representative present for any investigatory interview conducted by the employer, in which the employee has a reasonable belief that the discussion could lead to disciplinary action. While these rights were won for private sector employees in a 1975 U.S. Supreme Court decision, they have subsequently been extended to federal sector employees by the Federal Service Labor-Management Relations Statute and many public sector employees by state legislation and collective bargaining agreements.

## *What Employees Should Say to Invoke* WEINGARTEN RIGHTS:

***"If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I hereby request that my steward or union officer be present at the meeting. Without representation, I choose not to answer any questions."***

## *What Employees Should Know about*
# WEINGARTEN RIGHTS:

- The employer has no obligation to inform the employee of the right to union representation. Therefore, the employee must make a clear request for a union representative before or during the investigatory meeting.

- After an employee requests a union representative, the employer may either grant the request and wait until a union representative arrives, or deny the request and end the meeting immediately.
    - *If the employer grants the employee's request for a union representative, then the employee should respond to the questions once the union representative is present.*
    - *If the employer states that the employee will be disciplined and denies the request to have a union representative present, then the employee should stay in the room, take notes and not respond to any questions. Afterwards, the employee should contact a union representative immediately.*

- If the union representative is present at the investigatory meeting, the union representative has the right to: know the subject of the investigatory meeting; privately confer with the employee prior to the meeting; and speak in the meeting.

# Representing Members at Investigatory Meetings

## Weingarten Rights

An employee has the right to union representation during any interview that could lead to them being disciplined or terminated. They can also refuse to answer questions until their request for union representation at an investigatory interview is granted. These are called "Weingarten rights" because of a 1975 Supreme Court case called *NLRB v. J. Weingarten, Inc.*

## When does an employee have a right to union representation?

Employees have the right to request that a union steward be present at an "investigatory interview." An investigatory interview includes questioning that could reasonably lead to discipline or other adverse action.

## When do Weingarten rights not apply?

- Everyday conversations with management where there is little likelihood of discipline.
- Meetings at which management announces discipline they have already decided on.
- Routine medical exams or fitness for duty exams.

## Does management have to advise the worker of her right to union representation?

No. The member must request a steward.

## What happens then?

Once the member requests a steward, management must call in the steward, end the interview, or offer the employee the choice of either continuing the interview without representation or ending the interview. If management continues the interview without the worker's permission, she can refuse to answer questions.

## What is the steward's role at an investigatory interview?

- Insist on being told the subject matter of the interview before it begins.
- Talk privately with the employee before the interview.
- Counsel the worker on how to ask questions.
- Object to harassing questions.
- If management refuses to say what the interview is about or refuses to allow you to meet privately with the employee, tell the employee that they can refuse to answer questions until management does so.

## What can't a steward do at an investigatory interview?

- Repeatedly interrupt.
- Use profanity.
- Attempt to turn the interview into a debate.

# Investigation Checklist

Good investigation at the early stages of a grievance can lay the foundation for your case. Poor or sloppy investigation can harm your case because facts not recorded early tend not to be recorded at all.

Investigate at the first step as if the grievance will go to arbitration. A good investigation will expedite settlement. A good investigation will help build your confidence.

This checklist will assist you in completing a good grievance investigation.

___ Interview the grievant. Listen carefully to his/her story.

___ Have grievant write his/her rebuttal to discipline (if appropriate).

___ Interview grievant's co-workers.

___ Interview the witnesses and management, asking the Six W's. Get a written, signed statement from witnesses.

___ Keep written records of all interviews.

___ Request copy of personnel file (if disciplinary grievance).

___ Request any other management records needed (personnel policies, payroll records, seniority list, attendance records, etc.)

___ Determine if the problem affects others in the workplace.

___ Determine if this is one of the five violations and the remedy desired.

___ Determine if filing a grievance is the best strategy for solving the problem.

___ Check previous grievance settlements for precedents.

___ Check the experience of other stewards in similar cases.

___ Seek advice, if needed, from other union representatives.

___ Review the case with the grievant.

___ Anticipate and prepare for management's arguments.

___ Outline your presentation in writing.

___ Inform other workers about the issue and organize support activities for the grievance.

# GRIEVANCE FACT SHEET

*For Union use only.*

Name of Grievant: _____

Grievant's Address: _____

Telephone No. : (cell) _____ (home) _____

Job Classification: _____ Date of Hire: _____

Steward: _____ Supervisor: _____

Department: _____ Work Location: _____

Date of contract violation or events causing grievance: _____

_____

List contract clauses violated: _____

Describe grievance *fully*: _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Has this grievance been addressed with a supervisor? If so, provide the name of the supervisor, the date on which it was addressed with the supervisor, and the supervisor's response:

_____

_____

_____

What remedy do you want? _____

_____

_____

_____

List names of all persons (employees and supervisors) who have any information concerning your grievance, and state what information the person(s) have:

_____

_____

_____

_____

_____

List of any documents, emails, texts, recordings, etc. relevant to the grievance other than the collective bargaining agreement:

_____

_____

_____

Have the facts involved in this grievance occurred previously? If so, state when and where, and whether a grievance was filed:

_____

_____

_____

If this grievance involves discipline, list previous disciplinary suspensions or warnings *given to you* by the Company, the date of the discipline, and what the discipline was for:

_____

_____

_____

_____

If you claim that other employees have received lesser or no discipline for the same or similar offense, then list the names of each such employees, describe the similar offense including the penalty received, and the approximate date of the offense:

_____

_____

_____

_____

_____

List Any Additional Information Below (attach additional page/s if necessary):

_____

_____

_____

_____ _____

Signature of Grievant Date

# Access to Employer Information

Under the National Labor Relations Act (NLRA), unions have the right to request and receive information from the employer that is relevant to processing grievances.

The right to information stems from the concept that for the grievance procedure to function properly and the union to effectively represent its members, the union needs access to information that will enable it to intelligently evaluate grievances or potential grievances.

The employer, as part of its duty to bargain in good faith, is obligated to provide the requested information. Failure to do so subjects the employer to an unfair labor practice charge under Section 8(a)(5) of the NLRA.

## Requirements for having access to employer information are:

- The union must request the information.
- The information requested must be relevant to an actual or suspected grievance.
- No alternative means for obtaining the information is available.
- There are cases where an employee may not be required to provide information to the union, even though the information requested may be relevant. These situations arise when other interests override the union's need for information. They include: employee confidentiality/privacy (employee test scores, medical records) and business interests (trade secrets).
- The request for information need not be in written form. However, it is always a good idea to make the request in writing in order to document the request.
- The employer must provide the requested information to the union in a "timely manner." What is considered "timely" depends on each situation. Failure to provide information in a timely manner may be grounds for an 8(a)(5) charge.
- The employer will be required to comply with the union's request – so long as the information is in its possession and compliance with the request does not create an undue burden on the employer. For example the cost/time to compile/prepare the information is not unreasonable.
- The information must be provided in a useful form.

- The request for information must be specific and related to the grievance. The union cannot go on a "fishing expedition."

- The duty to provide information also applies to the union as part of its duty to bargain in good faith.

## Information You Can Request From The Employer:

*(this is not an exhaustive list!)*

# NLRB Decisions Protecting Steward & Worker Rights

*Lion Elastomers LLC, 372, NLRB No. 83 (2023)*

- Returned to the long-established "setting-specific" standards applicable to cases where employees are disciplined or discharged for misconduct that occurs while employees are engaging in protected activity.
- The Board reaffirmed the principle that employees must be given some leeway for their behavior while engaging in protected concerted activity, in order to safeguard their statutory rights.

*Valley Hospital Medical Center Inc., 371 NLRB No. 160 (2022)*

- In 2019 the Trump Board held that once the CBA expires, employers are not required to continue to deduct union dues from employee paychecks and remit them to the union.
- The Biden Board overruled and held that employers may not unilaterally stop collecting dues and remitting them to unions when the CBA expires.

*Tesla, Inc., 371 NLRB No. 131 (2022)*

- In 2019, the Trump Board held that employers could restrict union insignia based on size and appearance, making it easier for employers to restrict union buttons and t-shirts in the workplace.
- The Biden Board overruled and held that dress code polices that restrict union insignia are presumptively unlawful unless the employer can demonstrate that "special circumstances" exist.

*MCLAREN MACOMB, 372 NLRB NO. 58 (2023)*

- The Board held that severance agreements are unlawful if they contain terms that could interfere with or restrain Section 7 rights.
- The severance agreements here contained confidentiality and non-disclosure provisions, which the Board found violated the NLRA. The Board emphasized that "discussing terms and conditions of employment with coworkers lies at the heart of protected Section 7 activity," and the ability to discuss terms and conditions does not end when employment terminates.

*Stericycle, Inc.*, *372 NLRB No. 113 (2023)*

- The Board held that work rules that have a "reasonable tendency to chill employees from exercising their Section 7 rights" are unlawful for employers to maintain, unless the employer can prove "that the rule advances a legitimate and substantial business interest and that the employer is unable to advance that interest with a more narrowly tailored rule."
- This decision overruled *Boeing Co.*, 365 NLRB No. 154 (2017), a Trump Board decision that adopted an anti-worker standard that specifically held that rules restricting the use of cameras in the workplace are always lawful for all employers to maintain regardless of the circumstances.
- In *AT&T Mobility, LLC*, 370 NLRB No. 121 (2021), the Trump Board applied *Boeing* to hold that rules categorically prohibiting employees from recording conversations were always lawful regardless of the circumstances.
- Under *Stericycle*, no-cameras and no-recording rules are presumptively unlawful. In order to maintain such rules, the employer would have to prove that it has unique and substantial reasons for needing them, and that those reasons cannot be addressed with different rules that account for employees' legitimate Section 7 interests in being able to take photographs in the workplace and record workplace conversations and meetings.