

I. Right to Union Representation in Investigations

Whether you work for a public school, which is governed by the Illinois Educational Labor Relations Act (IELRA), or a private school, which is governed by the National Labor Relations Act (NLRA), you are legally entitled to union representation during *any* employer interview that you reasonably fear may result in discipline. However, unless your union's contract provides otherwise, to exercise this right under either law, you *must* request such representation. Because of the importance of this right, all educational employees need to be aware of it, and make appropriate and timely requests for representation.

The right to representation is based upon Section 3(a) of the IELRA and Section 7 of the NLRA. These sections of the laws provide either public or private educational employees the right to organize, form, join, or assist in employee organizations or engage in lawful concerted activities for mutual aid and protection. You will sometimes hear this right called a "Weingarten Right" from a 1975 U.S. Supreme Court case that initially identified this right under the NLRA.

If you are being interviewed by a supervisor and you reasonably believe that what you say may lead to discipline, prior to the start of the interview, you should state something similar to the following to invoke your Weingarten Right: *If this discussion could lead in any way to my being disciplined or terminated or affect my personal working conditions, I respectfully request that a union representative be present at the meeting.* If you failed to request a union representative at the start of the interview, you may do so at any time during the interview.

Union representation serves two important purposes. First, it provides the individual employee with a knowledgeable and articulate spokesperson who can help the employee present the employer with facts in support of his or her position. Second, it allows the union to monitor overall discipline by the employer and make certain that it is applied fairly and uniformly.

If you request union representation, the employer has two options: agree to such representation or proceed with its investigation without your interview. You, by the same token, can agree to forego union representation if you so desire. However, it would be imprudent to do so without first discussing the matter with a union representative. Additionally, you should not sign disciplinary documents without first consulting a union representative who can review the documents.

When the union representative is present at the investigatory interview, he or she may not be directed to remain silent or serve merely as a note-taker. Instead, the union representative has the right to engage in the following actions before and during an investigatory meeting:

- to request information on the general subject of the interview;
- to privately consult with you before the interview begins;
- to ask the interviewer to clarify or rephrase a question that is unclear;

- to ask clarifying questions on your behalf;
- to provide additional information to the interviewer at the end of the employee interview.

In most cases, you may not refuse to answer an employer's question. In fact, you may be disciplined for such refusal. In all cases, you should never provide false information during an interview.

The right to a union representative does not apply under the following circumstances:

- the employer's meeting is merely for the purpose of communicating general work instructions or training;
- prior to the meeting, the employee has been specifically advised that no discipline or employment consequences can result from the interview;
- prior to the interview, the employer has reached a final decision to discipline the employee and the purpose of the interview is only to inform the employee of the employer's decision.

In addition, the Illinois Educational Labor Relations Board (IELRB) has held that the right to representation does *not* apply to a post-observation performance evaluation conference. The reasoning of the Board was that there is no reasonable fear that the conference would lead to discipline. The Board stated, however, that if the parties included a provision for union representation at post-observation evaluation conferences in the collective bargaining agreement, then such representation would be required.