

“WEINGARTEN” RIGHTS UNDER SERB LAW

Under case law of the State Employment Relations Board (“SERB”), public sector employees in Ohio such as yourselves have the right to Union representation during interviews with deans/supervisors that may lead to discipline. The right of unionized public sector employees in Ohio to have present a Union representative during investigatory interviews is set forth in the following SERB cases: (i) In Re Davenport, SERB 95-023 (12-29-95); (ii) City of Cleveland, 14 OPER ¶1495 (6-30-97); and (iii) City of Cleveland, 15 OPER ¶1037 (11-21-97). All three SERB decisions are based on the U.S. Supreme Court’s decision in *NLRB v. Weingarten, Inc.*, 420 U.S. 251 (1975). These rights have become known as “Weingarten Rights”.

An investigatory interview occurs when a dean/supervisor asks an employee to defend his/her conduct, or questions an employee to obtain information which could be used as a basis for discipline. If an employee has a reasonable belief that discipline or other adverse consequences may result from what he or she says, the employee has the right to request Union representation. **Management is not required to inform the employee of his/her Weingarten rights. It is the employee’s responsibility to request a Union representative. If your dean/supervisor asks to have a meeting with you, you should respond, "Is this an investigatory interview and if so, I want to have a Union representative present."**

When the employee makes the request for a Union representative to be present, management has three options: (1) It can grant the request and stop questioning until the Union representative arrives; (2) It can call off the interview, or (3) It can tell the employee that it will call off the interview unless the employee voluntarily gives up his/her rights to Union representation (*an option the employee should always refuse*).

Please note: College deans/ supervisors may assert that the only role of a Union representative in an investigatory interview is to observe the discussion. SERB has clearly stated that a Union representative has the right to assist and counsel employees during the interview, provided the representative does not transform the meeting into an adversarial contest. The Union representative must also be allowed to speak privately with the employee before the interview. During the questioning, the representative can clarify questions and elicit facts favorable to the employee. A Union representative also serves as a “witness” for his/her peers.

If you are faced with an investigatory interview, you should request to have a Union representative present to assist you and serve as witness for you. Should the College dean/ supervisor insist that the interview proceed without a Union representative present, you should advise the dean/supervisor that you are participating in the interview under protest and proceed to cooperate with the interview unless the conduct at issue has potential criminal law ramifications. If this is the case, you should ask for a guarantee that the answers you provide will not be used against you in any criminal proceeding. If such guarantee is provided, you must proceed with the interview or face discipline or discharge for insubordination.