

# THE SHOP STEWARD'S ROLE IN A WEINGARTEN MEETING

The rights of employees to have a union representative present when they “reasonably believe” that an investigatory interview is to take place are called “Weingarten” rights, named after a Supreme Court case. Investigatory interviews occur when a supervisor questions an employee to obtain information which could be used as a basis for discipline. A steward can help workers to assert these rights by:

- Helping an anxious and inarticulate employee explain an incident.
- Raising extenuating circumstances.
- Advising an employee against a blanket denial, and, as a result, avoiding an appearance of dishonesty and guilt.
- Preventing an employee from making “fatal admissions.”
- Helping an employee to refrain from losing their temper in a potentially stressful situation.
- Serving as a witness to prevent supervisors from giving a false account of the investigation proceedings.

Stewards do not simply have to be passive observers during an investigatory interview, they can take an active role in the proceedings by assisting and counseling an employee.

## **For example, the steward:**

- Should expect to be briefed by the supervisor on the subject matter of the interview, before the meeting begins.
- Must be allowed to take the employee aside for a pre-interview conference.
- Has the right to speak during the interview; however, does not have the right to bargain over the purpose of the meeting.
- May ask for clarification of a question.
- May counsel the employee on how to answer a question.
- May provide supplementary information to the supervisor.
- May call for a caucus to speak with the employee in private, outside of the room.

If the “Weingarten” rights of an employee have been observed, stewards have no authority to advise an employee to withhold answers or to answer falsely, since the worker may be disciplined as a result of such action. Moreover, employers have no obligation to inform employees of their “Weingarten” rights – this is the union’s job.

# SUPERVISORS AND STEWARDS AS EQUALS

When stewards are performing union functions spelled out in the contract or acting in their official capacity, they are considered *equals with management*. The law provides that stewards must be free to challenge management statements without censorship. The NLRB describes this relationship as: “a relationship between [employer] advocates on one side and union advocates on the other side, engaged as equal opposing parties in litigation.”

Stewards act in an official capacity when they:

- Investigate grievances
- Request information
- Present a grievance
- Act as a *Weingarten* representative
- Participate in a labor/management meeting

Stewards act in an individual capacity when they discuss their own work assignments, performance or evaluation.

## **GREATER LEEWAY ALLOWED**

A vigorous or heated argument between an employee and a supervisor might lead to a charge of insubordination against an employee. However, stewards are allowed greater leeway than the average employee in discussions with management because they are acting in an official capacity as an agent or representative of the union.

## **QUESTIONS AND ANSWERS**

Q: Can a steward be penalized for refusing a management order or telling a co-worker not to obey a supervisor?

A: Stewards should follow the universal rule of “obey now, grieve later” or they may be subject to discipline.

Q: How about an order to do something unsafe?

A: Answer these questions before refusing an order you believe is unsafe: (1) Do you have a reasonable belief that there is a real danger of death or serious injury? (2) Did you ask management to eliminate the danger and it refused to do so? (3) Is the danger so urgent you cannot wait for a safety inspection, and (4) Is there no reasonable alternative?

Q: Are stewards protected if they speak up during staff meetings?

A: As long as management has not clearly prohibited all employee comments, stewards have a legal right to speak up (but not be disruptive), including criticizing or challenging employer policies.

# THE UNION'S DUTY OF FAIR REPRESENTATION

Federal law requires the union to represent the interests of all members fairly, impartially, and in good faith. The duty extends to all employees in the bargaining unit, regardless of whether they are members of the union and/or participate in union activities. The duty applies to all aspects of representation, including negotiation, administration, and enforcement of the contract.

Unions do have a wide range of discretion in grievance handling, including the right to not process every grievance through all the steps of the grievance procedure, as long as its decision is not motivated by bad faith or discriminatory reasons and the union does not act arbitrarily.

Arbitration is the final step if the grievance is not settled between the union and the employer. A neutral third-party arbitrator is chosen from a list. That arbitrator's decision is final and binding under most contracts.

A union is not responsible for taking every case to arbitration, but it must be able to show a rational reason for not pursuing the case further. Some typical reasons include: (1) The nature of the violation and the degree of seriousness of the penalty or action. (2) How the case could affect the whole unit. (3) Cost may be considered in a decision, but should not be the primary reason for dropping a case.

Unions may decide whether to take a grievance to arbitration, through a decision of a Grievance Committee, Executive Board, or through a vote of the body. Any method is acceptable to courts, as long as it is uniformly applied.

## **Tips on Making Sure We Comply with the Duty of Fair Representation**

- Carefully investigate each possible grievance to determine the merits.
- Keep good records of your investigation (notes from interviews, copies of documents you've reviewed).
- Keep in touch with the grievant about the progress of the grievance and the concern of the union in his/her case.
- Process the grievance in a timely manner, following the procedures set out in the contract.
- Represent all members of the bargaining unit equally.
- Decide whether to pursue the grievance, including arbitration, on the merits.
- Communicate any decision to withdraw a grievance and the reason (simply stated) to the grievant in writing. Explain any grievance appeal process that may be available.