***WEINGARTEN* RIGHTS**

The term "***Weingarten* Rights**" refers to a U.S. Supreme Court decision (420 US 251, 1974) which ruled that an employee has the right to a union representative in any interview the employer might hold that is intended to investigate a possible discipline charge against the employee. Often compared to the *Miranda* rights of criminal suspects charged by the police, there is a crucial difference: unless the union contract requires it, the employer does not have to tell the suspected employee that he or she has this right to union representation. *The employee must ask for the representation!*

The *Weingarten* Rights simply put are:

1. **The right to be informed, in advance, of the subject matter of disciplinary interviews.**
2. **The right to union representation at such an interview.**

Still there is the question of what to do when these rights are violated. Normally, the rule is to follow orders and file a grievance, or in this case an unfair labor practice charge, afterward. If you are required to attend such an interview, and your request for union representation is denied, the best advice is to attend the meeting but respond to any and all questions by simply repeating your request for representation.

Remember, if your request for union representation is denied,

- **Don't refuse or walkout.**
- **Attend the meeting but repeat your request for union representation.**

The role of the union representative in a *Weingarten* meeting:

- Ask for time to talk in private before the meeting;
- Take notes & record the names, dates questions;
- Secure "due process" and fair treatment;

- Be sure that the grievant is not railroaded;
- Object to any attempts to anger or frighten the grievant;
- Call a timeout to caucus or recess as needed;
- Ask for questions to be rephrased or explained as necessary;
- Make no permanent or undo-able decisions at that interview;
- Right after the interview, call your union staff.

"JUST CAUSE" GUIDELINE

The basic underlying principle in disciplinary cases is that the employer must have "just cause" for imposing the disciplinary action. A common test for determining whether "just cause" existed was developed by Arbitrator Daugherty in the celebrated Enterprise Wire case (46 LA 359, 1966 and 50 LA 83). The guideline appears in condensed form below.

A flat "no" answer to one or more questions indicates that the employer's action was arbitrary, capricious and/or discriminatory in one or more respects, thereby signifying an abuse of managerial discretion and allowing the arbitrator to substitute his judgement for that of the employer.

__1. DID MANAGEMENT ADEQUATELY WARN THE EMPLOYEE OF THE CONSEQUENCES OF HIS CONDUCT?

__2. WAS MANAGEMENT'S RULE OR ORDER REASONABLY RELATED TO EFFICIENT AND SAFE OPERATIONS?

__3. DID MANAGEMENT INVESTIGATE BEFORE ADMINISTERING THE DISCIPLINE?

__4. WAS THE INVESTIGATION FAIR AND OBJECTIVE?

__5. DID THE INVESTIGATION PRODUCE SUBSTANTIAL EVIDENCE OR PROOF OF GUILT?

__6. WERE THE RULES, ORDERS AND PENALTIES APPLIED EVENHANDEDLY AND WITHOUT DISCRIMINATION TO ALL EMPLOYEES?

__7. WAS THE PENALTY REASONABLY RELATED TO THE SERIOUSNESS OF THE OFFENSE AND THE PAST RECORD?

JUST CAUSE & DUE PROCESS ADDENDA:

Of course, since arbitrator Daugherty's Enterprise Wire decision in 1966, arbitrators have continued to struggle with due process issues in discipline cases. The book was by no means closed in 1966 with these seven tests. A review of post-*Enterprise Wire* decisions reveals some of the following additional considerations that may affect an arbitrator's finding of just or sufficient cause:

__ **WERE THERE MITIGATING CIRCUMSTANCES?**

There may be circumstances which partially reduce the guilt of the employee and, therefore, might be used to plead for a reduction or lessening of the discipline imposed.

__ **WAS PROGRESSIVE DISCIPLINE USED?**

The idea of discipline is to get the offender back on track and not just to punish him or her for the offense. For less severe causes, therefore, the employer may be expected to begin with lighter disciplinary actions and resort to termination only when every attempt has been made to the correct the offending behavior.

For example, the following sequence of disciplinary actions is commonly employed:

1. Oral reprimand
2. Written reprimand
3. Short-term suspension (week or less)
4. Long-term suspension (30 days or less)
5. 5. Termination

Whatever system is used, it must be carefully and consistently applied to avoid violating Just Cause Test # 6.

__ **WERE THE DISCIPLINARY PROCEEDINGS CONDUCTED IN PRIVATE?**

No employee should be reprimanded or interrogated in such a way so as to humiliate him or her in front of co-workers or the general public. With the exception of the union representative, all employees should be disciplined in private.

__ **DID THE EMPLOYER STRIKE OR ASSAULT THE GRIEVANT?**

It is inappropriate for any employer or supervisor to grab, poke, push, pat or in any way touch an employee being reprimanded or disciplined.

__ **WAS THE DISCIPLINE RELATED TO OFF-DUTY/OFF PREMISES CONDUCT?**

If the disciplinary action is based on the grievant's behavior off-duty or off the employer's premises (like fighting with the supervisor in a bar on his night off), then the employer's action may be improper. The employer would have the burden of showing the work connection.

__ **WAS THE GRIEVANT PLACED IN DOUBLE JEOPARDY?**

According to this principle, it is improper to try or punish an offender twice for the same offense. Therefore, once discipline for a given offense has been imposed, it may not thereafter be increased. This defense is applicable where management unduly delays the assessment or enforcement of discipline.

LAST WORDS ON

THINGS TO AVOID

1. DON'T refuse a work order unless it is a specific danger to your health or safety.
2. DON'T tell anyone else to ignore or disobey a management order.
3. DON'T resign or encourage a member to resign: Once handed in, even if in a fit of anger or frustration, it may be impossible to retract or withdraw.
4. DON'T participate in or lead a walkout or slowdown unless it's authorized by the union.
5. DON'T automatically take management's word on everything; they are often misinformed and often have not thoroughly read the contract.
6. DON'T divulge confidential information. The union is the exclusive representative and can be liable for your actions.
7. DON'T allow personal feelings to interfere with contractual decisions. Remember the law regarding the duty of fair representation (DFR).
8. DON'T jump to conclusions when presented with a complaint. You need to investigate and check out the facts carefully.
9. DON'T lose your temper when acting in an official capacity.
10. DON'T "horse-trade" grievances or make "side deals." Each Grievance must be considered on its own merits.

11. DON'T let management intimidate you from exercising your contractual rights.

12. DON'T promise anything you can't deliver.

13. DON'T try to do it all alone. You are part of the union, and your union brothers and sisters are there to help you get things done.

14. DON'T be just a "dial-an-agent" steward. Get involved.