

## **The *Weingarten* case**

The actual lawsuit that led to the establishment of *Weingarten* rights involved an employee at a lunch counter. Laura Collins was accused of stealing and interviewed by the store manager and a loss prevention specialist. The company believed Collins had taken a large box of chicken but paid only for a small box. Collins said she took only four pieces of chicken – the amount customers receive in a small box – but had to put it in a large box because the store was out of small boxes. Her story checked out, and Collins was cleared.

From these humble facts, *Weingarten* rights were born. During the interview, Collins asked several times for her union rep or shop steward, but the company wouldn't grant her request. Although management asked Collins to keep the interview to herself, Collins told her shop steward about it and the union filed an unfair labor practice charge against the company. Ultimately, the Supreme Court decided that an employee is entitled to union representation for investigatory interviews.

## **When *Weingarten* Applies**

An employee who reasonably believes that an investigatory interview could lead to discipline is entitled to ask for union representation. An investigatory interview is a meeting with management at which the employee will be questioned or asked to explain his or her conduct, and which could lead to disciplinary action against the employee.

The employer is not obligated to inform employees of their *Weingarten* rights or to ask whether an employee would like a union rep at a meeting or interview. The employee must affirmatively request union representation.

## **The Employer's Options**

Once an employee requests representation, the employer may not proceed with the interview without the union representative. However, the employer need not conduct the interview at all: It may interview the employee with the union rep present, or refuse to allow the union rep and discontinue the interview, carrying on its investigation by other means.

## **The Role of the Union Representative**

The employer is under no duty to bargain with the union representative at the investigatory interview. The rep is present only to assist the employee. For example, the rep can clarify the facts, provide additional information, or suggest possible witnesses. The employer is free to insist that the employee provide his or her own version of the events under investigation.

Although some employers believe they are required only to allow a union rep to observe the interview without participating, *Weingarten* clearly gives employees the right to assistance from

the rep. At the same time, however, a rep who consistently interrupts the proceedings or instructs an employee not to answer questions has likely overstepped his or her authority.

## **Only Union Members Are Protected**

Today, it's clear that only employees who are in a union have *Weingarten* rights. For a few years, however, this right applied to everyone. In 2000, the National Labor Relations Board (NLRB) extended *Weingarten* rights to all employees, whether or not they were in a union. Non-union employees were entitled to ask that a coworker be present at investigatory interviews. However, the NLRB reversed itself in 2004, going back to its previous interpretation that only union members have *Weingarten* rights.