



LOCAL 68

Operating Engineers

Weingarten Rightsⁱ

In 1975 the United States Supreme Court, in the case of *NLRB v. J. Weingarten, Inc.*, 420 (1975), upheld a National Labor Relations Board (NLRB) decision that employees have a right to union representation at **investigatory interviews**ⁱⁱ. These rights have become known as the Weingarten Rights.

During an investigatory interview, the Supreme Court ruled that the following rules apply:

Rule 1: The employee must make a clear request for union representation before or during the interview. The employee cannot be punished for making this request.

Rule 2: After the employee makes the request, the employer must choose from among three options:

- Grant the request and delay questioning until the union representative arrives and (prior to the interview continuing) the representative has a chance to consult privately with the employee;
- Deny the request and end the interview immediately; or
- Give the employee a clear choice between having the interview without representation, or ending the interview.

Rule 3: If the employer denies the request for union representation, and continues to ask questions, it commits an unfair labor practice and the employee has a right to refuse to answer. The employer may not discipline the employee for such a refusal.

All union employees are encouraged to use their *Weingarten* rights. The presence of a union representative can help in many ways:

- A union representative can serve as a witness to prevent supervisors from giving a false account of the conversation.
- The union representative can object to intimidating tactics or confusing questions.
- The union representative can, when appropriate, advise an employee against blindly denying everything, thereby giving the appearance of dishonesty and guilt.
- The union representative can help an employee to avoid making fatal admissions.
- The union representative can warn an employee against losing his or her temper.
- The union representative can raise extenuating factors.

ⁱ <https://www.nlr.gov/about-nlr/rights-we-protect/your-rights/weingarten-rights>

ⁱⁱ An Investigatory Interview occurs when Management questions an employee to obtain information, AND the employee has a reasonable belief that discipline or other consequences may result from what he or she says.