

WEINGARTEN RIGHTS FOR PUBLIC EMPLOYEES

Weingarten rights is the term used to mean that employees have certain grievance union representation rights. The name Weingarten comes from the name of the 1975 U. S. Supreme Court case (*Weingarten v. NLRB*) which established the right of representation. The Oregon Employment Relations Board adopted the standards set out from the U. S. Supreme Court decision in 1988 as enunciated below.

The Board has found that Oregon public employees have grievance union representation rights when all three of these conditions apply:

1. The employee is subject to an investigatory interview, and,
2. The employee has a reasonable belief that information obtained from this interview may result in discipline, and,
3. The employee has requested Union representation. Agency management does not have the duty to inform an employee about his/her right to Union representation.

An employee does not have Weingarten rights for any meetings with Agency management that involve work correction, work assignments, performance appraisal or receipt of a letter of expectation, or, when the employee receives the actual discipline issued.

If the employee requests Union representation, Agency management can respond in one of the following ways:

1. Accede to the request and defer the interview until a representative is present. Any delay in conducting an investigatory interview so that the employee can locate a Union representative need not be for an unreasonable period of time. Note that the interview need not be delayed because a particular Union representative is not available.
2. Decline to interview the employee with a Union representative present and continue its investigation without the interview, or,
2. Give the employee the choice of having the interview without representation or having no interview at all.

The Board has also ruled on the role the Union representative can play during an investigatory interview. Here are the elements of the Union representative's role:

1. The Union representative may ask, at the outset of the interview, what is the purpose of the interview including asking about the general subject of the questions to follow.
2. During the questioning of the employee, the Union representative may seek clarification of questions being asked. The Union representative can not speak on

behalf of the employee. The Union representative can not consult with the employee about how to answer the question.

3. After Agency management has completed questioning of the employee, the Union representative may ask the employee questions designed to clarify previous answers or to elicit further relevant information, and,
4. Before the end of the meeting, the representative may suggest to Agency management other witnesses to interview and may describe relevant practices, prior situations or mitigating factors that could have a bearing on Agency management's deliberations concerning discipline.