

The Weingarten Rules

In 1975, the Supreme Court made a landmark decision (*NLRB v. Weingarten*), establishing an employee's right to be represented by a union at an investigative interview with his or her employer when the employee reasonably believes that the interview may lead to disciplinary action. This right to have the union steward present is called the Weingarten right.

If a musician employed under a collective bargaining agreement is called to a meeting with a manager or the music director, the following rules apply in regard to representation.

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

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

- Grant the request and delay questioning until the union representative arrives and has a chance to talk privately with the employee;
- Deny the request and end the interview; or
- Give the employee a choice of having the interview without representation or of ending the interview.

An employer's denial of the request for union representation is an unfair labor practice (ULP), and the employee has the right to refuse to answer if the employer continues to ask questions. The employer cannot discipline the employee for such a refusal.

When the union representative arrives, the employer must inform him or her of the subject matter of the interview, *i.e.*, the conduct for which discipline is being considered. The union representative must be allowed to talk to the employee privately before questioning begins. The union representative must be allowed to speak during the interview, but the union does not have the right to bargain over the purpose of the interview.

If the employer complies with the Weingarten rules, the union does not have the right to tell an employee not to answer questions or to give false answers. The union can request an employer to clarify a question so that an employee can understand what is being asked. After a question is asked, the union can give advice how to answer. When questioning ends, the union can provide additional information to the employer.

This article includes a portion of an article by Nathan Kahn in the ROPA newsletter, *The Leading Tone*.