

## WEINGARTEN RIGHTS 101

### **What is the right?**

In 1975, the U.S. Supreme Court affirmed that the National Labor Relations Act (NLRA) “creates a statutory right in an employee to refuse to submit without union representation to an interview which he reasonably fears may result in his discipline.”<sup>1</sup>

In 1987, the Illinois Educational Labor Relations Board (IELRB) concluded that:

- Section 3(a) of the Illinois Educational Labor Relations Act (IELRA) encompasses the right to refuse to submit to an investigatory interview without union representation where the employee reasonably fears that the interview might result in discipline;
- such a right arises only where the employee specifically makes a request for union representation;
- in a routine disciplinary situation, the employer may deny the request for representation, discontinue the interview and proceed to obtain information from other sources. However, if the employee requests representation and the request is denied, the employer violates the Act if it continues to conduct the interview; and
- the right to have union representation as a matter of law does not attach to post-observation conferences of a teacher under remediation.<sup>2</sup>

### **What is an investigatory interview?**

An investigatory interview occurs when a supervisor questions an employee to obtain information that could be used as a basis for discipline or asks an employee to defend his/her conduct. Not every conversation with a supervisor qualifies as an “investigatory interview;” however, even a hallway meeting where an administrator starts asking questions could be considered an investigation. On the other hand, a performance review or the giving of some information by an administrator would likely not be an investigatory interview.

### **How to invoke the right?**

If an employee has a reasonable belief that discipline or other adverse consequences may result from what he/she says to a supervisor during an investigatory interview, then the employee has the right to request union representation. An employer is not required to inform the employee of his/her Weingarten rights; it is the employee’s responsibility to make a clear request for union representation before or during the interview.<sup>3</sup> An employee cannot be disciplined for making such a request or coerced into waiving the Weingarten right.

### **Does an employee have the right to request information on the subject of the interview, in advance of the interview?**

This right has been recognized by the Illinois Labor Relations Board. The IELRB would likely follow its sister-agency’s precedent. In order to invoke this right, the employee must ask the employer for information on the subject(s) of the upcoming investigatory interview.

- *IL State Toll Highway Authority v. ILRB*, 26 PERI 119 (2d Dist., 2010) (affirming that Weingarten provides an employee the right to be informed of the subject matter of the investigatory interview before the interview commenced where the employee makes a request to exercise that right).

<sup>1</sup> *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

<sup>2</sup> *Summit Hill School District*, 4 PERI 1009 (IELRB 1987).

<sup>3</sup> The Weingarten right may be expanded via collective bargaining (e.g., employer obligated to inform employee of his/her Weingarten right or automatically provide for union representation at any investigatory meeting).