

DO YOU UNDERSTAND YOUR WEINGARTEN RIGHTS?

By Sherry Posnick-Goodwin

Your principal calls you into her office, shuts the door and asks you to sit down. She questions you about the way you handled a certain situation and begins to make accusations. You start to feel anxious and worry you could face disciplinary action. Should you invoke your Weingarten rights? The answer is yes, absolutely.

Based on the 1975 U.S. Supreme Court ruling of *NLRB v. J. Weingarten, Inc.*, union employees are entitled to have union representation at meetings with supervisors that are investigatory or that could lead to disciplinary action. These rights have become known as the Weingarten rights.

The case is based on an employee who worked at a food outlet operated by J. Weingarten, Inc. She was summoned to an interview with supervisors and questioned about failing to pay full price for a box of chicken. The employee, a member of the Retail Clerks Union, asked for a union representative several times, but her request was refused by the manager each time. The employee reported what had happened to her shop steward and other union representatives. As a result of her being denied a union representative, an unfair labor practice charge was filed with the National Labor Relations Board, and the ruling in favor of the employee was appealed numerous times until it went before the high court.

To invoke Weingarten rights, a union member should say something like this: *"If this discussion could lead to my being disciplined, I request union representation at this meeting, and that the meeting be postponed until my union representative arrives."* When the employee makes the request for a union representative to be present, management has three options: It can stop questioning until the representative arrives; it can call off the interview; or it can tell the employee that it will call off the interview unless the employee voluntarily gives up their rights to union representation (an option the employee should always refuse).

Employers will often assert that the only role of a union representative in an investigatory interview is to observe the discussion. The Supreme Court, however, clearly acknowledged a representative's right to assist and counsel workers during the interview.

The Supreme Court also ruled that before an investigatory interview, management must inform the union representative of the subject of the interrogation. The representative must also be allowed to speak privately with the employee before the interview and at any time during the interview. During the questioning, the representative can interrupt to clarify a question or to object to confusing or intimidating tactics.

While the interview is in progress the representative cannot tell the employee what to say — but may advise them on how to answer a question. At the end of the interview the union representative can add information to support the employee's case.

"Employees must demand their right to be represented in these investigatory interviews," says Priscilla Winslow, assistant chief counsel of the CTA Legal Department. "Don't be afraid to ask for what you are entitled to."