



Weingarten Right

This fact sheet discusses when a steward should be present in the investigatory phase of the discipline process. A bargaining unit employee should never give up his/her right to a steward.

Under the contract

Section 24.04 of our collective bargaining agreement provides that if a person has a **reasonable** belief that a meeting with management will lead to a disciplinary action, that person can request a steward. Note that under this language management does not have to provide a steward **unless a steward is requested by the employee**. (If the agency has a past practice of requesting a steward for discipline meetings, like ODJFS, then the agency makes sure a steward is provided).

Supreme Court decision

The language in the contract comes directly from the 1975 Weingarten decision by the U.S. Supreme Court. That decision provides for union representation at investigatory interviews that are believed to lead to discipline.

There are a number of components to this decision. First, the employee must request a steward. If the supervisor simply says to the employee that they are going to have a little talk, there is no right to a steward. But if this "little talk" is a mask for a disciplinary meeting -- then the employee should stop the meeting and request a

steward. It is a violation to punish the employee for making this request.

Second, after the request has been made, the management representative must either end the conversation or delay the meeting until a steward is available or ask the employee if he/she wants to continue the conversation without steward representation. If the employer refuses to provide representation at the request of the employee and discipline arises out of the events at issue, then the employer has committed a major procedural error that will likely mitigate the punishment that was a result of the alleged wrong doing (see Arbitration #799). NOTE: You are not entitled to choose the steward you want.

Why is a steward helpful?

A steward should meet with the employee in a pre-interview consultation prior to the interview. In this meeting, the steward will ask the employee his/her side of the story and also request any documentation/evidence the employee has to corroborate his/her position.

The steward has a right to ask the supervisor, as well as to ask the employee, in private what this interview is all about prior to the meeting. In the interview, the steward can make sure the employee only answers questions asked. The steward can keep tempers under control and help clarify questions from the supervisor. Clarifying the questions is particularly important when the employee is afraid, nervous, or not effective at explaining his/her actions.

(Continued)

Can I refuse to answer my supervisor's questions?

The only time a bargaining unit employee can refuse to answer questions is if criminal actions are involved. Only in cases involving abuse, theft, or some physical harm in which the employee could be prosecuted for, should he/she refuse to answer. In criminal matters, the employee should consult private counsel. However, if the employer guarantees a bargaining unit employee that the employee's statements cannot be used in a criminal proceeding and orders the employee to answer the questions, then the employee must answer the questions. The employee, however, should request that the employer's

guarantees be reduced to writing and provided to him or her or his or her representative(s). It is always a good policy to tell the truth. In the end the truth generally comes out and a person only appears to be more in the wrong by not being honest.

Note: OCSEA does not represent employees in criminal matters only in employment. Admissions made at administrative hearings in the course of the discipline processes may be used at a criminal court hearing.

Reference

Article 24.04
Arbitration #799

OCSEA

AFSCME Local 11 - AFL-CIO

Revised 04/09

Printed In-House by
OCSEA

