

# American Postal Workers Union, AFL-CIO

Telephone  
202: 842-4225

From the Office of JAMES I. ADAMS  
Director of Research & Education

## Memorandum

817 Fourteenth Street, N.W.  
Washington, D.C. 20005

### THE WEINGARTEN RIGHTS

#### Weingarten

The Supreme Court's decision in Weingarten gives employees the right to union representation when a management representative attempts to commence an investigatory interview.

The fundamental distinction between the two categories of rights is that Miranda is primarily an exclusionary rule. Failure to abide by this rule is grounds for excluding evidence in a subsequent criminal proceeding.

Weingarten rights, by contrast, exist without regard to whether there is a subsequent proceeding of any sort.

Further, Miranda vindicates the right of a defendant not to incriminate himself.

Weingarten exists not so much to prevent self-incrimination, but to allow the union to represent the employee in any decision or procedure which might impact on the terms and conditions of employment.

The Weingarten case sets forth the Union's right to represent employees in investigatory interviews. It allows employees the right of pre-interview consultation and the right to make requests of the union representative for clarification or information during the interview. Postal Inspectors interviewing employees are not obligated to bargain or discuss the issues with the union representative. However, if the employee's rights under Weingarten are denied, no information gathered during the interview can be used as the basis of any disciplinary action.

Weingarten rights attach to any interview which the employee reasonably believes may result in disciplinary action. The employee must assert the right for union representation. If he/she is silent the employer is allowed to proceed with the interview without a

union representative present. In the event that no representative is available, under most circumstances, the employer is allowed to proceed with the interview.

Once an employee does make a request for union representation, the employer is permitted one of the three options:

The employer may:

1. Grant the request
2. Discontinue the interview
3. Offer the employee the choice

between continuing the interview unaccompanied by a union representative or having no interview at all.

Under no circumstances may the employer continue the interview without granting the employee union representation, unless the employee voluntarily agrees to remain unrepresented after having been presented with the options set forth above.

While an employee may at first refuse to request Weingarten rights, he or she may reassert them at any stage of the interview. Any time the employee asserts Weingarten rights, the employer must present the options set forth above and abide by the employee's choice.

If such request for union representation is granted, the employee must proceed with the interview.

There have been limitations placed on Weingarten rights since the case was decided. An employee's right to union representation does not extend to the representative of his or her choice.

The right relates to investigatory interviews—that is, interviews arranged to elicit facts which may form the basis for discipline. No Weingarten rights attach to a meeting called for that purpose of merely announcing a disciplinary measure that the employer has already decided to take. Weingarten rights may, however, attach to so-called

"counselling" interviews if during the course of such discussion, the employer gathers information which may become the grounds for later discipline.

Members should be aware that mere satisfaction of an employee's Miranda rights does not satisfy Weingarten rights in those instances where information derived from a criminal investigation is used to support disciplinary action.

Significantly, the activities of stewards or union representatives while representing employees in investigatory interviews are also protected under the Act against interference or threats of reprisal. No union representative can be disciplined for responding to an employee request under Weingarten.

In reviewing Weingarten and Miranda, it must be understood that they relate to different rights under the law. Both cases vindicate the right to pre-interview consultation. Weingarten, however, relates to possible adverse action concerning employment, discharge, suspension, etc. Miranda pertains to criminal investigations and proceedings.

An employer is only obligated to inform the employee of the Weingarten rights upon request.

The subject of a criminal investigation must be informed of his/her Miranda rights regardless of whether they are asserted, prior to the initiation of an interview with a prospective defendant.