

Weingarten Rights and Duties

A refresher for Stewards

D I A M O N D L A W



The Right of a Worker to a Union Representative

In an investigatory interview which could result in discipline.

Rules

The employee must request a steward.
Management has no duty to offer a steward.
The union cannot insist on being present.

Right does not apply

In evaluation meetings

In counseling meetings.

In meetings to receive discipline.

Role of the Steward

Ask clarifying questions.

Suggest evidence.

Police the process.

You are not a potted plant.



What to do Before the Meeting

Make sure you know the charges.

If you view yourself as only a
“witness” you are doing half the job.

Your job is to help the employee
prepare for the meeting.

You have a right to do your own
investigation!



Don't agree to be muzzled!

Preparing the worker is your job.

Help the employee understand the
big picture.

Help with word choices.

Help the employee tell the truth.
Not necessarily the whole truth, but
the truth.



All this work is done before the
meeting.

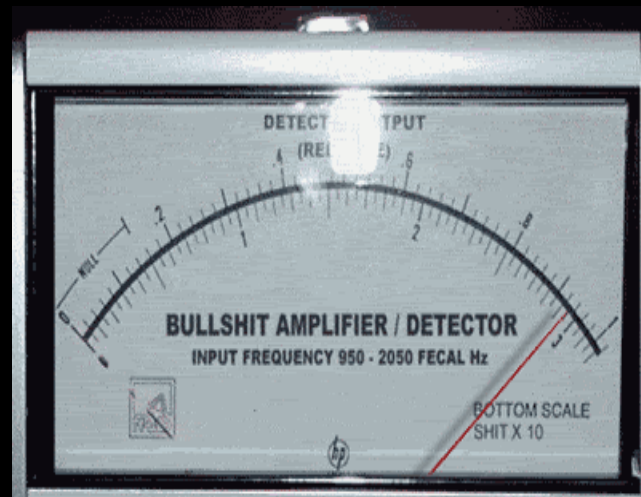
You can't un-ring the bell.



How will the employee look to
an arbitrator?



Use your common sense.



Help employee with remembering the truth.

Validate answers such as:

I don't know.

I don't remember that now.

Make a record of anything unfair.

Put it on the tape or in your notes.

Say what is happening out loud.

Things to Say

“We’ve asked for a break so we can try to clear up some confusion. Are you saying you are denying us a break?”

“We’ve asked to understand who made the complaint. Are you saying you are refusing to give us this information?”

When confronted, Middle Management Will Crumble!



Demeanor

Kill them with kindness.

You can't be too polite.

If in doubt, respectfully end the
meeting.

If the interviewer is impolite, make a
polite record.

Examples:

“We’ve been at it two hours and you haven’t let us take a break. I’m feeling uncomfortable.”

“The tone you are using seems aggressive. I’m worried that you won’t get clear answers if you continue to use that sort of tone.”

“I have it down here in my notes that you’ve asked that same question three times. I’m starting to feel that the investigation isn’t fair.”

Remember:

- The employee is Exhibit A.
- You are Exhibit B.
- Your notes are Exhibit C.

- Keep clear, accurate and unbiased notes.
- Help the employee stay calm and to present an accurate view of the facts.

Advanced Weingarten

- When to correct the interviewer's lack of understanding.
- When to present additional information.
- When to present mitigating information.
- When to cut a deal prior to the interview.
- When to refuse the interview.

Weingarten versus Due Process

There will always be another
interview....

Mitigation now versus later?

Do's and Don'ts

Goofus and Gallant



Goofus bosses his friends.



Gallant asks, "What do you want to do next?"



Goofus takes the last apple.



Gallant shares his oranges.

Weingarten Do's and Don'ts

- Don't be a Potted Plant.
- Don't go in unprepared.
- Don't rely on your memory.
- Don't pre-judge the employee.
- Don't ignore your own amber lights.
- Clarify the charges.
- Make sure the questions are clear.
- Go in with a handle on the facts.
- Ask for time with the employee before the interview.
- Make a record for *Garrity*.

Remedies for Violation

- ULP for violation of right to union representation under the PECBA.
- Political remedies.
- Organizing!
- Argument to set aside discipline in just cause grievance arbitration.