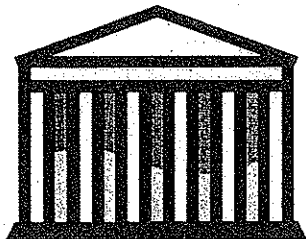


THE WEINGARTEN RULE:

AN EMPLOYEE HAS THE RIGHT TO HAVE A UNION REPRESENTATIVE AT A MEETING WITH THE EMPLOYER IF HE OR SHE HAS A REASONABLE EXPECTATION THAT DISCIPLINE MAY RESULT.

This is a private sector rule that has been made applicable to Public School employees under the EERA. (See *Redwood CCD v. PERB* (1984) 159 Cal.App.3d 617)



THE COURT'S GUIDELINES

1. **The employee must request the representative.** The right arises only in situations where the employee requests representation. The employee may and will forfeit this right if he/she goes ahead and meets with management without an Association Representative.
2. **There must be a reasonable belief that discipline will result from the investigatory meeting.** Regular "run-of-the-mill" conversations with management such as review of job requirements or training will not be covered. However the right to representation exists even in cases where no discipline does result from the interview. The right to representation is based on the reasonable belief of the employee, not anyone else in the situation.
3. **The employer is not required to interview the employee.** The employer may decide not to interview the employee, if the employee requests the presence of a union steward, but may continue the investigation. The employer does not have to justify his/her refusal to allow union representation. The employer is free to carry on the inquiry without interviewing the employee, and thus leave to the employee the choice between having an interview unaccompanied by his representative, or having no interview and forgoing any benefits that may be derived from one. If the employee refuses to be interviewed without his/her Rep, the employer would then be free to act on the basis of information obtained from other sources.

Though this appears to leave the union and employee a choice to make, there is, in fact, nothing to be gained by meeting with management without one's union representative. An employer who is serious about resolving a problem should welcome a union's participation. The choice, then, remains with the employer.

4. **The employer has no duty to bargain with the union representative at an investigatory interview.** The representative is present to assist the employee, and may attempt to clarify the facts or suggest other employees who may have knowledge of them. The employer, however, is free to insist that he is only interested, at that time, in hearing the employee's own account of the matter under investigation.