

Stewards' Weingarten rights in investigative interviews upheld

“**I need to see you in the office!**” Those words from a supervisor have struck fear into the heart of more than one letter carrier. In your mind you are thinking, “What now?” “Here we go again,” or “What did I do?” Regardless of the reason, you should always be ready to ask the supervisor this simple question: “Can this lead to discipline?”

If the supervisor starts to ask questions about your work, your route, what you did on a specific day, or any number of questions which indicate they are investigating you, ask, “Can this lead to discipline?” and then say, “I want a steward.” If you believe you are being investigated for some infraction, you have the right to decline to answer any more questions until you have been provided with a steward.

This right to union representation is guaranteed to you through federal labor law, and is known as the Weingarten rule. This rule gives each employee the right to representation during any *investigatory interview which he or she believes may lead to discipline* (*NLRB v. J. Weingarten*, U.S. Supreme Court, 1975).

Weingarten only applies to investigatory interviews—when a supervisor is searching for facts to determine an employee’s guilt or whether to issue discipline. Weingarten does not apply to job discussions (Article 16.2) or fitness-for-duty examinations.

You must ask for a steward. A steward’s rights under Weingarten are absolute, but a steward cannot exercise those rights for you. Once a steward has been provided, you have the right to a private discussion with the steward before the interview continues. The steward has the right to be with you during an interview, whether with a supervisor, OIG agent or postal inspector.

What are the steward’s rights in an investigative interview? Many supervisors mistakenly believe a steward can only be a silent observer during an investigative interview. This belief is absolutely wrong. The *JCAM* states:

In a Weingarten interview the employee has the right to a steward’s assistance—not just a silent presence. The employer would violate the employee’s Weingarten rights if it refused to allow the representative to speak

or tried to restrict the steward to the role of a passive observer.

The *JCAM* was reinforced by a recent National Labor Relations Board decision involving a letter carrier. A steward may assist by asking questions, clarifying questions and answers and objecting to inappropriate questions. In a recent NLRB decision (*USPS and NALC Branch 753, AFL-CIO. Case 25-CA-29340*), a letter carrier was being investigated for alleged willful delay of DPS mail. A steward was provided and the carrier and steward were allowed time to consult and discuss the situation privately. However, during the interview the supervisor asked a leading and loaded question: “Are you aware of the penalty for willfully delaying the mail?” The steward objected and attempted to clarify the question. The supervisor instructed the steward not to interrupt and to allow the carrier to answer.

The steward correctly observed the potential trap the supervisor was laying before the carrier and tried to intervene. As the Board wrote:

Asking [the carrier] if [he] were aware of the penalty for willfully delaying the mail is much akin to the age-old loaded and misleading question “Are you still beating your wife?” Inasmuch as [the supervisor] acknowledged that if [the carrier] answered “yes,” she would have understood his response to mean...he had willfully delayed the mail. It is reasonable that [the steward] would have wanted to assist [the carrier] in responding to this potentially incriminating question.

The Board concluded:

By refusing to allow a union representative to participate and assist an employee during an investigatory interview [the Postal Service] violated Section 8(a)(1) of the Act.

While this recent NLRB decision does not plow new legal ground, it does reinforce the existing Weingarten provisions, which clearly give stewards the right to be active participants in investigative interviews. For a complete reading of this NLRB decision, you may find it in its entirety on the NALC website: [NALC>Departments>CAU>MRS>M-01668](#). 