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In Memoriam 1939-2014

ENSURING YOUR RIGHT TO UNION REPRESENTATION

_____ (Weingarten Rights) _____

An employee has the right to request the presence of a union representative when the employee has a reasonable belief that the interview might result in disciplinary action against them. *N.L.R.B. v. J Weingarten, Inc.*, 420 U.S. 251, 256, 260 (1975) (also known as "Weingarten rights").

Weingarten rights do not apply in "run-of-the-mill shop-floor conversations," such as situations where an employer gives an employee instructions, training, or advice on how the employee can improve their work techniques. There must be a reasonable basis for the employee to fear that the interview might result in the employer taking disciplinary action.

In order to invoke this right, the employee must request the presence of the union representative; if the employee fails to request the presence of a union representative, the employee waives their *Weingarten* rights.

It should be noted, however, that there are no magic words that the employee is required to use; the employee must simply put the employer on notice that he/she desires union representation. The employee can do this by directly requesting the presence of a union representative before continuing with the interview, or the employee can simply ask the employer if this is the type of interview where he/ she *should* have a union representative present. The key is that the employee must somehow let the employer know that he/she desires union representation. See *In re City of Cleveland*, SERB 97-011 (6-30-97).

If an employer insists on conducting an investigatory interview of an employee without the presence of a union representative, the employee may refuse to submit to the interview if he/she reasonably believes that the interview will result in disciplinary action against them. This right, however, does not necessarily prohibit the employer from taking disciplinary action against an employee who refuses a direct order to answer questions. Rather, an employer's refusal of union representation would serve as the basis for an unfair labor practice charge and/or a basis to challenge discipline imposed related to the questioning.

ASSERTING YOUR RIGHTS IN AN INVESTIGATION

_____ (Piper Rights) _____

Under Ohio Revised Code § 9.84, any person appearing as a witness before any public official, department, board, bureau, commission, agency, or representative thereof, in any administrative or executive proceeding or investigation, public or private, has the right to be accompanied, represented and advised by an attorney if he or she so requests.

In other words, when a public employee who is called as a witness in an administrative or executive proceeding, or called in for questioning in a formal investigation, the employee is entitled to have an attorney present. See *In re Cov. Serv. Charges & Specs. Against Piper*, 88 Ohio St.3d 308, 311-312, 725 N.E.2d 659, 662 (2000) (also known as "*Piper* rights").

For purposes of the *Piper* rights, a "witness" is considered to be anyone who is called upon by the employer and/or investigator to relate facts that they personally observed. Of course, an employee who is the subject of an investigation is also considered to be a "witness."

In regard to what constitutes an "administrative or executive proceeding," the proceeding or investigation must be one with a certain level of formality. Simply being called into a supervisor's office to discuss employment issues is not generally enough to trigger an employee's *Piper* rights. If, however, the employer is recording the employee's statements in some way (video, transcript, etc.); there are high ranking managers and/or employer's counsel present for the questioning; or the employer reads the employee his *Garrity* rights, these are all indications of circumstances where *Piper* rights may be asserted