

# YOUR RIGHT TO BE REPRESENTED

***The Association is the exclusive representative for the bargaining unit members in your district and therefore, the only employee organization authorized to represent individual unit members in certain situations.***

What are those situations in which you may want or need representation?

1. An administrator calls a conference with you and you have reason to believe that you will be subjected to reprimand or disciplinary action.
2. You receive a “does not meet standards” overall evaluation.
3. You have a grievance. You are entitled to Association representation at every step of the grievance process, including the informal conference.
4. A meeting has been arranged to resolve a complaint about you – if the complainant is someone other than your designated evaluator, and an administrator is to be present.

NOTE: An employee always has the right to halt any conference already in progress with any administrator, if the conference becomes disciplinary in nature, and may demand postponement for a reasonable amount of time to obtain representation. If you need to be represented, contact your Association representative or an Association grievance representative or call your CTA staff person.

# 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.3d617)

## THE COURT'S GUIDELINES

- A. **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.
- B. **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.
- C. **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 Representative, 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.

- D. **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.

- E. The employee generally has the right to his chosen representative.** The employer's refusal to allow the employee the representative of their choice when that representative is present and available is a violation of the Weingarten Rule. However, an available union appointed representative can be insisted upon by the employer over the objections of the individual employee if the employee's chosen representative is unavailable. If using the representative chosen by the employee would result in a delay, it would not violate the Act for the employer to force the employee to accept a different representative.
- F. The Weingarten Rule also applies to group meetings where management confronts more than one employee at a time.**
- G. The employee is entitled to information from the employer regarding the subject of the investigation prior to the meeting.**
- H. The employee is entitled to consult with his/her union representative prior to the meeting.** The National Labor Relations Board (NLRB) has ruled that if the employer insists on an immediate interview, the employee and his/her union representative are entitled to some time to confer in private in advance to allow the employee and the union representative to confer during non-working time.
- I. The union representative is allowed to request the pre-interview consultation meeting from the employer.**
- J. The employee's representative has to be allowed a chance to speak on behalf of the employee.** The employer violates the law when the representative is told that he/she cannot say anything. The employee representative cannot, however, disrupt or obstruct the interview.

## INSUBORDINATION

Insubordination is defined in Black's Law Dictionary as "State of being insubordinate; disobedience to constituted authority. Term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer." Webster defines insubordinate as "not submitting to authority, rebellious."

**IT CAN GET YOU FIRED!** Insubordination is one of the major contributing factors in many employee dismissals and is one of the easiest charges to prove. However, it is a concept that is misunderstood by many employees and, as a result, they place themselves in the position of being insubordinate. In order to avoid this hazard, a thorough understanding of the concept is necessary.

**REMEMBER WHO'S BOSS!** First, it is important to understand that the principal or immediate supervisor has some management rights simply because he/she is the "boss". Any principal or immediate supervisor has the right to exert leadership, to direct the institutional operations, to enforce rules, policies, reasonable orders and directions so long as they conform to the contract and are clear and unambiguous, not injurious to your health, applied uniformly, and justly administered.

**RULE #1:** The best rule to follow in regards to insubordination is "Don't be insubordinate."

**WORK; THEN GRIEVE.** If an employee questions a directive issued by the immediate supervisor or principal, advise him/her to discuss the objections with the principal/immediate supervisor. If the principal/immediate supervisor insists that the directive be obeyed, advise the employee member to comply unless it is a threat to their (or their students') health or safety. Then file a grievance.