



# Union Member Rights and Policies For IATSE Local 635

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# Your Rights as a Union Member

## IATSE Local 635

Local 635 is required by Federal law, under Section 105 of the Labor-Management Reporting and Disclosure Act (LMRDA), to inform members of their rights and how to enforce them. The LMRDA guarantees certain rights to union members and imposes certain responsibilities on union officers. These rights and responsibilities appear in Titles I through V of the LMRDA and are codified as §411 - 415 of Title 29 United States Code.

The U.S. Courts have determined that a “one-time” notification at the time a person joins a union is not enough to comply with the law and that it is the union’s duty to “keep members informed”. The intent of this document is to inform you of 1) your protected rights as a union member, 2) the responsibilities imposed on local union officers by Federal law, and 3) contacts at the Office of Labor-Management Standards (OLMS) where you may obtain additional information or assistance. A copy of this notice and LMRDA Title I - “Bill of Rights” is on file with other Local 635 official documents.

## MEMBERS

**Bill of Rights** - Local 635 members have:

- equal rights to participate in union activities
- freedom of speech and assembly
- voice in setting rates of dues, fees, and assessments
- protection of the right to sue
- safeguards against improper discipline

**Note:** You have a right to a secret ballot vote on the rates of dues, initiation fees and assessments as well as for referendums and elections.

Although you have an overall right to sue the union, you may first be required to exhaust the internal union appeal procedures but for no more than three months.

**Copies of Collective Bargaining Agreements** - Local 635 members (and nonmember employees) have the right to receive or inspect copies of collective bargaining agreements that affect their employment.

**Note:** You have a right to receive a copy of any bargained labor agreement that covers you, along with all amendments, and to inspect any other contracts and/or records that Local 635 administers which affect your employment.

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## ELECTIONS

**Election Rights** - Local 635 members have the right to:

- nominate candidates for office
- run for office
- cast a secret ballot
- protest the conduct of an election

**Elections** - Local 635 must:

- hold elections of officers by secret ballot at least every three years.
- conduct regular elections in accordance with Local 635's constitution and bylaws consistent with Federal law and preserve all election records for one year.
- mail a notice of election to every member at least 15 days prior to the election.
- comply with a candidate's request to distribute campaign material.
- not use union (or employer) funds or resources to promote any candidate.
- permit candidates to have election observers.
- allow candidates to inspect Local 635's membership list at least once within 30 days prior to the election.

**Note:** You have the right, as a member in good standing, to run for office, subject to reasonable, uniformly imposed qualifications and certain Federal prohibitions to holding office.

**Local 635 must provide each member in good standing with a reasonable notice for nomination of officers.**

**Prohibitions to Holding Office** - A person convicted of certain listed crimes is prohibited from serving as a union officer, employee, or representative for up to 13 years.

## OFFICERS

**Financial Safeguards** - Local 635 officers have a duty to manage the funds and property of the union solely for the benefit of the union and its members in accordance with the Local 635 constitution and bylaws. Union officers or employees who embezzle or steal union funds or other assets, commit a Federal crime punishable by a fine and/or imprisonment.

**Bonding** - Union officers and employees of a union who handle union funds or property must be bonded to provide protection against losses if their union has property and annual financial receipts which exceed \$5,000.

**Loans** - A union may not have outstanding loans to any one officer or employee of the union that in total exceed \$2,000 at any time.

**Fines** - A union may not pay the fine of any officer or employee of the union convicted of any willful violation of the LMRDA.

**Officer Removal** - Local union members have the right to an adequate procedure for the removal of an elected officer guilty of serious misconduct.

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## REPORTING

**Reports** - Local 635 is required to file an initial information report (Form LM 1) along with a copy of its constitutions and bylaws (as well as subsequent changes or amendments) and an annual financial report (Form LM 2, 3 or 4) with the Office of Labor-Management Standards (OLMS). The Local must maintain copies of all documents and reports filed and all related records for five years which, upon request for just cause, must be made available to members for examination. The reports are public information and copies are available from the OLMS.

**Labor Organization Reports** - The Local 635 President and Treasurer must:

- file an initial information report (Form LM 1) with OLMS.
- file annual financial reports (Form LM 2, 3 or 4) with OLMS.
- assure that all records necessary to verify the reports are retained for at least five years.

**Note:** Local 635 (and the International) is required to file a copy of its constitution and bylaws, subsequent amendments, and annual financial reports with the U.S. Department of Labor. The reports contain the salaries and expenses of officers and full-time employees of the union, as well as other detailed income and expenses of the union.

The financial reports, as well as the Local's constitution and bylaws, are public information. Copies can be obtained from the U.S. Department of Labor, Office of Labor-Management Standards (OLMS) in Washington, DC or the OLMS Nashville District Office.

**Union Officer and Employee Reports** - Local 635 officers and its employees must file annual reports concerning any loans, benefits, or financial interests received from employers (whose employees the Local represents) and/or businesses that deal with the Local.

## OTHER

**Trusteeships** - Unions may only be placed in trusteeship by a parent body for the reasons specified in the LMRDA.

**Prohibition Against Certain Discipline** - A union or any of its officials may not fine, expel, or otherwise discipline a member for exercising any LMRDA right.

**Prohibition Against Violence** - No one may use (or threaten to use) force or violence to interfere with a union member in the exercise of a LMRDA right.

**Internal Issue Remedies** - In matters relating to elections and/or discipline regarding internal rules of membership, the provisions of Local 635's and/or the International's constitution and bylaws must usually be exhausted before initiating administrative enforcement action with a government agency or filing a civil suit in a Federal court.

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## Government Information and Assistance

The Office of Labor-Management Standards (OLMS) is the office in the U.S. Department of Labor that administers most provisions of the Labor-Management Reporting and Disclosure Act (LMRDA) of 1959, as amended. The LMRDA ensures basic standards of democracy and fiscal responsibility in unions which represent employees in the private sector.

In matters relating to unfair labor practices of employers or unions, the National Labor Relations Board (NLRB), an independent federal agency, provides resolution and enforcement assistance concerning violations of the National Labor Relations Act (NLRA).

Copies of Local 635's (or any union's) annual financial reports and constitution and bylaws are available from the OLMS Division of Reports, Disclosures, and Audits.

U.S. Department of Labor  
Office of Labor-Management Standards  
Public Disclosure Room  
200 Constitution Avenue., Room -5610  
Washington, DC 20210

Phone: 202-693-0125  
Fax: 202-208-2904

Additionally, you may view, download, and/or request hardcopies of reports on-line at the OLMS website – [http://www.dol.gov/esa/olms\\_org.htm](http://www.dol.gov/esa/olms_org.htm).

Contact the nearest OLMS area office if you have questions, need assistance or additional information. The OLMS office for all North Carolina Unions is located in Nashville, TN.

Nashville District Office  
U.S. Department of Labor, OLMS  
233 Cumberland Bend Drive, Room 110  
Nashville, TN 37228  
615/736-5906  
FAX: 615/736-7148

Reminder – an employer or a union, its officers, employees, or representatives may not interfere with your right to seek outside assistance regarding your employment or rights as a union member.

\* \* \*

## **Policy on Substance Use and Abuse**

### **I.A.T.S.E. Local 635**

I.A.T.S.E. Local 635 is committed to providing a drug free environment. Not only can the use and/or abuse of drugs and alcohol jeopardize the health, safety and well-being of the individual user and other co-workers, but it also results in absenteeism and productivity concerns, higher workers' compensation costs and health/disability premiums, and endangers the safety of the general public who attend events we staff.

Since our members are our most valuable resources, and the safety of our members and the public is important to us, we have developed and published this substance abuse policy to help us contribute to the solution of this very difficult health and social problem. While a good policy alone can't reduce substance abuse, it is the indispensable foundation for an effective effort against substance abuse.

Although I.A.T.S.E. Local 635 is not required to comply with the Drug Free Workplace Act of 1988, or the drug testing guidelines published by the U.S. Department of Health and Human Services and/or the U.S. Department of Transportation, our policy takes into account those requirements. Those provisions establish reasonable bases to ensure that the legitimate needs of the members are balanced properly against I.A.T.S.E. Local 635's concerns of protecting the workplace, the public and our members.

Therefore, it is the policy of I.A.T.S.E. Local 635 that the possession, sale or use of illegal drugs or alcohol in the workplace is not consistent with I.A.T.S.E. Local 635's needs to operate in a safe and efficient fashion. For that reason, no member of I.A.T.S.E. Local 635 may use or possess unlawful drugs or alcohol, i.e., any substance found on the \*list of controlled substances issued by the Food and Drug Administration now or in the future, at any time while on a call or at a location where I.A.T.S.E. Local 635 refers it's members. This policy also prohibits members from such use that impairs his/her performance of work on the job, as well as prohibiting use while on a call or representing I.A.T.S.E. Local 635 at any time. In addition, while I.A.T.S.E. Local 635 has no desire to intrude upon the private activities of its members when they are away from work and not on a call, involvement with unlawful drugs, including their manufacture or distribution, constitutes a severe breach of accepted conduct and is also prohibited.

Members are also prohibited from bringing prescription drugs to a call, unless they have been prescribed by a licensed physician, such drugs can only be utilized by members receiving such prescriptions in the manner, combination and quantity prescribed. In instances where any member holds a position that I.A.T.S.E. Local 635 considers to be safety sensitive, we must be notified by the member that the use of prescription drugs on the job will not impair the individual's working abilities and in some cases, by a suitable statement from the prescribing physician.

Members are prohibited from using alcoholic beverages during a call or within six (6) hours prior to reporting to a call, and/or being under the influence of alcohol while on a call. Member use or possess alcohol on a client's property in any unauthorized manner, or bring alcohol onto a client's property for the purpose of such use.

Any member who is convicted of a crime involving the violation of any Federal or non-federal statute prohibiting the manufacture, sale, distribution, possession or use of any controlled substance in the work place must notify I.A.T.S.E. Local 635 within five (5) days after such conviction.

Violation of any portion of this policy will subject the member to appropriate disciplinary measures that may result in a fine and/or reprimand, suspension or expulsion. All members in positions considered by the I.A.T.S.E. Local 635 to be safety sensitive shall be subject to inquiry prior to job assignment, following an accident on a call or on I.A.T.S.E. Local 635 business. Any member whose conduct, appearance or behavior may tend to suggest that the individual is impaired or otherwise not fit to perform the tasks of his or her job due to suspected influence of drugs or alcohol, will be asked to agree to answer some questions. Refusal to agree to answer some questions may subject the member to disciplinary actions, which may lead to termination, or in the case of a non-member, to elimination from consideration for future referral.

I.A.T.S.E. Local 635 will treat the details of any member's participation in an accredited inpatient drug/alcohol treatment assistance program confidentially, to the greatest extent possible, to ensure that the member's privacy is respected.

The elements of this Substance Abuse Policy are intended to achieve the overall goal of fostering a drug-free workplace and a healthy, safe environment for our valued members, the clients we serve and the general public. Although this policy has been carefully written to address all of the concerns in this sensitive area, I.A.T.S.E. Local 635 reserves the right to modify or amend it. I.A.T.S.E. Local 635 will make every effort to see that its members will be notified if any changes are made.

A copy of this Substance Abuse Policy will be provided to every person hired by I.A.T.S.E. Local 635, to any person offered conditional employment, and upon request, to any job applicant. This policy applies to all members, conditional members or non-member referrals. Its receipt and acknowledgment by each is required on the Rights and Policy Statements Check-off. Anyone who has questions or concerns about this policy should contact the local's Business Representative.

\*See FDA Part 1308--Schedules of controlled Substances  
Schedules I., II., III., IV., V. of controlled substances at:  
<http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?CFRPart=1308>

# Fall Protection Guidelines

## IATSE Local 635

IATSE Local 635 has always considered safety as one of the most important issues in the workplace. The entertainment industry as a whole has been prone to keep the lights dim and turn a blind eye to unsafe work practices in many different areas and activities which regrettably has led to countless stories of preventable worker injuries and deaths. One of the areas that needs illumination is unprotected and unsafe climbing practices. We feel that strong methods must be used to change these habits. In this light Local 635 has decided to adopt a policy based on the findings and standards set down by the U.S. Occupational Safety & Health Administration (OSHA) and the American National Standards Institute (ANSI) regarding the issue of fall protection.

Local 635 has followed the most up to date fall protection procedures and systems that require the use of body harnesses for more than fifteen years. We have modified our position regarding the types of harnesses and when they are to be used several times during this period. The industry now stands at a wonderful turning point where the technology is available and affordable to protect all workers from most any fall hazard associated with working on lighting trusses, scenery, projection platforms and any number of the other various show elements. Since the Federal & State Laws are clear, in that fall protection is required, we can no longer ignore safe work practices nor do we choose to be involved in projects with other vendors who do not share our concern for worker or public safety and compliance with the law.

We also do not believe that these issues should be arbitrated during the load-in or load-out process as that is clearly counterproductive for most everyone involved. To this end we want to raise the issue well in advance, so that fall protection can be provided without exorbitant cost, and to clarify what is considered acceptable.

In 1992 ANSI published the Z359.1 standard, which sets reasonable standards for the manufacture, use, and testing of most fall protection equipment. We would look for evidence of compliance with this standard in determining what equipment would be acceptable. Fortunately most harnesses, lanyards, lifelines etc. that comply with this standard are permanently marked as being in compliance. This is an easy way to screen equipment that workers or employers present as acceptable fall protection equipment.

One issue that is not clearly addressed by the Z359.1 standard is the use of horizontal lifelines. Although not addressed by the 1991 ANSI Z359.1 committee, all reputable fall protection sources, including references in Cal OSHA and Federal OSHA, require that due to the complexity in calculating forces in horizontal lifelines, they must be designed and installed under the supervision of a qualified person. Because of this requirement, we would look to the design statements by whoever



designed the system to make our determination of whether a particular system or installation is acceptable.

Please know that if at times it seems that we are being too particular with regard to the details of a system, it is only because a lack of attention to one or more of these details can and will result in the failure of an otherwise good, dependable and compliant system. Fall protection systems are somewhat unique in that they are only under full load when they are stopping a fall and failure at that point will most often end with tragic results that could have been so easily avoided.

We know you join us in considering and recognizing these very serious issues. Through your help and the industrywide adoption of State and Federal OSHA requirements we will succeed in making the entertainment industry a much safer place today and for those who follow us in the future.

Special thanks to:

The U.S. Department of Labor Occupational Safety & Health Administration (OSHA)

The American National and Standards Institute (ANSI)

The National Safety Council

Wally Blount; CM Lodestar

Keith Bohn; Tomcat USA, Inc.

Dan Culhane; SECOA

Harry Donovan; Donovan Rigging, Inc.

Mike Garl; James Thomas Engineering, Inc.

Jay O. Glerum; Jay O. Glerum & Associates, Inc.

Peter Happe; Walt Disney Imagineering (Walt Disney)

Mark Herman; Lift-All Co., Inc.

Rodney F. Kaiser; J.R. Clancy Inc.

Edward Paget; Jones & Phillips Associates, Inc.

Rocky Paulson; Stage Rigging, Inc.

Bill Sapsis; Sapsis Rigging, Inc.

Thomas S. Young; J.R. Clancy Inc.

# IATSE Local 635 Discrimination and Harassment Policy

IATSE Local 635 fundamentally believes that a proper work environment should be a place where individuals can live and work together with mutual respect and tolerance. Each person has the right to feel equally comfortable and secure in a work environment as they do in her or his own home. To guarantee this right, each member regardless of position is required to be responsive to another member's needs for safety, security, and comfort within the working environment. In accordance with this belief, Discrimination and Harassment, by an individual or group, toward another individual or group is absolutely unacceptable.

**Hostile Environment** : An Environment which unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive living or working environment.

**Resistance:** An act of making an individual's working or living environment more difficult by hostilely reacting to that individual's request, comment, or suggestion.

**Discrimination:** An act of denying or inhibiting a member or group from full participation in house or corporate operations on the basis of race, gender, religion, sexual orientation, class, national origin, political belief, age, veteran status, physical trait, or physical or mental disability.

Discrimination, based on the aforementioned criteria, includes but is not limited to the following:

- Denying membership or employment to an individual
- Denying full participation to a member.
- Revoking the membership or employment of an individual.
- Retaliating against a member for his/her stance on a house decision or for filing a charge against another member.
- Denying a position to a member either appointed or elected.

Such action may result in a Member Review or termination from membership in IATSE Local 635.

If a member is unable to perform the duties a labor position requires or person is unable to perform part of his or her job on the basis of physical or mental disability, religion, physical trait, race, gender, sexual orientation, class, national origin, political belief, age, or veteran status, the Local will do its best to find or alter a position to help the individual to fit into the work environment.

IATSE Local 635 will use whatever financially feasible means or other (i.e. building ramps, providing interpreters for the hearing impaired, etc.), to make the organization accessible to disabled members.

## Harassment

General Harassment is unwelcome behavior toward another member or group on any basis including that of race, gender, religion, sexual orientation, class, national origin, political belief, age, veteran status, physical trait, or physical or mental disability, which promotes an intimidating, hostile, or offensive working or living environment. It need not be intentional or persistent, but these factors may affect the severity of the charge. Such behavior may result in a Member Review or termination from membership to IATSE Local 635.

Examples of general harassment include, but are not limited to, the following:

- Acts of physical aggression, intimidation, hostility, or unequal treatment on any basis.
- Derogatory comments, notes, remarks, jokes, pictures, epithets, depiction's, or items that create an uncomfortable or hostile environment. Sexually oriented conversations or the use of sexually explicit language does not in and of itself constitute harassment unless their actions create a hostile or uncomfortable environment.
- Verbal harassment, abuse, or threats on any basis.

Sexual Harassment - Due to the prevalence of sexual harassment in our society and the lack of clarity on the definition of the term, a more detailed and descriptive definition of sexual harassment is provided. Sexual Harassment may include, but is not limited to the following:

- Acts of physical aggression, intimidation, hostility, or unequal treatment based on gender or sexual orientation.
- Derogatory notes, jokes, gestures, comments, or remarks that are gender-based (not necessarily sexual), sexual comments, pictures, or items (i.e. sex toys, magazine, etc.) which create an uncomfortable or hostile environment
- Unwelcome propositions, suggestive comments, or demands of a sexual nature.
- Unwelcome solicitation or coercion of sexual activity or other sex-linked behavior by promise or rewards or threat of punishment or revocation of membership.
- Remarks, epithets, jokes, or slurs regarding sexual orientation or activities that create a hostile environment.
- Unwanted and/or unsolicited touching (i.e. hugging, back rubs, etc.)
- Unwelcome subtle pressure for sexual activity (physically touching, patting, pinching, brushing against another's body, etc.) Mode of dress or undress does not in and of itself constitute harassment unless it creates unwelcome subtle pressure for sexual activity.
- Sexual assault ranging from unwanted sexual conduct (i.e. touching one's private parts, etc.) to rape.

Use of sexually explicit language, dressing provocatively, or engaging in sexually oriented conversations will not be considered valid reasons for an individual to be considered sexually harassed.

## Procedure for Members who Experience Discrimination or Harassment

- a. A member who experiences discrimination or harassment should tell the accused that the behavior was unwelcome and document the incident.

- b. The accuser should notify the Business Representative and/or the Steward on Call immediately. The accuser will be required to prepare a written list of charges in the form of a sworn affidavit, reciting clearly the offense charged, the name of the accused, the time, place and nature of the violation, over the signature of the accuser, together with a statement of the names of all witnesses to the offenses charged who shall be known to the accuser.
- c. The Business Representative and/or the Steward on Call must present the accused with the complaint after conferring with the accuser and any possible witnesses present. If the Business Representative is unable to present the accused within a reasonable period of time (within 48 hours), the Steward on Call or another Local 635 Officer must present the complaint.
- d. If the Business Representative or the Steward on Call is the accuser or is the accused, the accuser should notify another Officer.
- e. When a member has been accused of five (5) or more incidents of sexual harassment, he or she may be subject to a review. If the initial incident is severe enough, the accuser may request for review proceedings to begin immediately.
- f. Charges shall be filed in duplicate, but only the original need bear the seal of the Notary Public before whom the affidavit was sworn.
- g. Charges shall be filed with the Secretary of the local union within 60 calendar days after the offense becomes or should have become known to the person making the charge.
- h. Charges filed shall be administered in strict accordance with the provisions of Article Eleven of the Constitution and Bylaws of IATSE Local 635.

## Sources

- ◇ 18 U.S.C. section 2241-2245, Crimes and Criminal Procedure, Chapter 109A - Sexual Abuse
- ◇ EEOC Compliance Manual, Notice #N-915-050, Policy Guidance on Current Issues of Sexual Harassment
- ◇ Civil Rights Act of 1964
- ◇ Americans with Disabilities Act
- ◇ The Law of Equal Employment Opportunity by Stephen Shulman and Charles Abernathy, (1990)
- ◇ Employment Discrimination Law and Litigation, Volume I by Merrick T. Rossein, (1990)
- ◇ Katz v. Dole, 709 F.2d 251 (1983)
- ◇ Henson v. City of Dundee 682 F.2d 897 (1982)
- ◇ Constitution & Bylaws of the IATSE Local 635 (1997)

# Weingarten Rules Overview

## NLRA – Section 7:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection"

## NLRB v. Weingarten, Inc. 420 U.S. 251 (1975):

The employer violated [Section] 8 (a) (1) of the National Labor Relations Act because it interfered with, restrained, and coerced the individual right of an employee, protected by [Section] 7, "to engage in ... concerted activities for ... mutual aid or protection," when it denied the employee's request for the presence of her union representative at the investigatory interview that the employee reasonably believed would result in disciplinary action.

Weingarten Rights. Most union members have heard this term. Many shop stewards have the right to protect their members because of it. But what is the origin of these rights? What lies behind one of the most significant labor law rulings in recent history? For thirty years, Weingarten has been an often-used word in the vocabulary of union advocates.

## Here is the story:

J. Weingarten, Inc. operated a large chain of convenient stores, several of which allowed customers to purchase packaged meals. In June 1972, Ms. Leura Collins, a lunch-counter clerk at Store No. 98 in Houston, Texas, was called into the manager's office and interrogated by her manager and a loss prevention investigator employed by the store. Unknown to Ms. Collins, this investigator had been observing her for the past two days on the basis of a report that she was stealing from the register. Although this particular investigation uncovered no evidence of wrongdoing on Ms. Collins' part, another manager learned (from a coworker) that she "had purchased a [\$2.98] box of chicken ... but had placed only \$1.00 in the cash register."

During the interview, Ms. Collins, a member of Retail Clerks Local Union No. 455, requested several times that her steward or another union representative be present. When questioned about the chicken, Ms. Collins replied that she only took a dollar's worth, but was forced to use a large-size box since the small ones were not available. The investigator went to confirm this; upon his return he "told Collins that her explanation had checked out [and] that he was sorry if he had inconvenienced her, and that the matter was closed."

It was at this point that Ms. Collins finally broke down, exclaiming that the only thing the company ever gave her was a free lunch. Hearing this, the manager and the investigator were surprised, since Store No. 98 had no such policy. Once again Ms. Collins was interrogated, once again she requested representation and

once again it was denied. The investigator then asked her to sign a statement that claimed she owed the company \$160 for those "free" lunches. She refused. In Store No.2, where she had previously worked [1961-1970], free lunches were policy. It was later learned that other J. Weingarten employees, including the manager, took "free" lunches, since the company had no official policy that forbade it, a fact confirmed to the investigator who then ended the interview. Upon leaving, Ms. Collins was asked by the manager "not to discuss the matter with anyone because he considered it a private matter between her and the company [and] of no concern to others." However, Ms. Collins reported this incident to her union and an unfair labor charge was filed.

## The Purpose

One vital function of the steward is to prevent an employer from coercing or intimidating employees into confessing misconduct, especially in situations where the supervisor (or any other employer representative) engages in interrogatory techniques.

The NLRA protects union concerted activities, which includes a member's right to request union representation during investigatory interviews. This right was recognized in 1975 with the U.S. Supreme Court's ruling in *NLRB v. J. Weingarten*. (420 U.S. 251)\* and became known as a member's Weingarten Right.

*\*Note: This opinion was delivered by Justice William Brennan and was joined by Justices Douglas, White, Marshall, Blackmun and Rehnquist [the current Chief Justice]. The dissenting opinion was filed by Chief Justice Warren Burger and joined by Justice Powell.*

A lone employee, confronted by the employer's investigation and the possibility of discipline, may be either too afraid to face accusations, too inarticulate to accurately explain, or simply too uninformed to raise extenuating factors. A knowledgeable union representative could assist this employee by drawing out favorable facts or applicable mitigating circumstances.

A tangible knowledge of Weingarten is vital, since it allows the steward to:

- Serve as a (non-silent) witness to this interview
- Contradict a supervisor's possibly false account of said interview
- Prevent intimidating tactics or confusing questions by supervisor
- Prevent the member from making self-incriminating statements or admissions
- Advise the member, under certain circumstances, to deny everything
- Warn the member about losing his or her temper
- Discourage the member from informing on others, i.e., co-workers
- Identify any extenuating or mitigating factors that could benefit the member

## The Investigatory Interview

Weingarten Rights can be invoked ONLY in an investigatory interview, which occurs when:

- Employer Representatives (Supervisor, Manager, et. al.) question an employee about specific conduct or to obtain information that could be used as a basis for discipline.
- As a result of the above, the employee has a reasonable belief that the interview could result in discipline or some other adverse consequence. Example: an employee being questioned about an accident would be justified in fearing that he or she might be blamed.

Of course, not every interaction between employee and supervisor is an investigatory interview; for example, a supervisor speaking to a subordinate about a particular job performance. While the supervisor may no doubt question the worker about his or her performance, the likelihood of discipline is not the issue. Both parties are merely engaged in a work-related conversation – there is no investigation.

However, this workshop conversation could suddenly acquire an entirely different demeanor should the supervisor becomes hostile or the questioning turns into suspicion. In this case, any employee may become fearful; at this point would require union representation.

Yet, when a supervisor (or any agent of the employer) calls an employee into the office to warn, reprimand or impose discipline already decided, this is not – according to the NLRB\* – an investigatory interview, since employee conduct is not being questioned, but rather has been observed and is being acted upon.

\* Baton Rouge Water Works, 246 NLRB 995 (1979)

Shop-floor conversations: Not every administrator-initiated discussion is an investigatory interview. For example, a supervisor may talk to an employee about the proper way to do a job. Even if the boss asks questions, this is not an investigatory interview because the possibility of discipline is remote. The same is true of routine conversations to clarify work assignments or explain safety rules.

Nevertheless, even an ordinary shop-floor discussion can change its character if the supervisor is dissatisfied with the employee's answers.

If this happens, the employee can insist on the presence of a union representative before the conversation goes any further.

Disciplinary announcements: When a supervisor calls an employee to the office to announce a warning or other discipline, is this an investigatory interview affording the employee a right to union representation? The NLRB says no, because the employer is merely announcing a previously arrived-at decision and is not questioning the worker. Such a meeting, however, can be transformed into an investigatory interview if the supervisor begins to ask questions to support the decision.

Note: An employer that has followed a past practice of allowing association representatives to be present when supervisors announce discipline, must maintain the practice during the contract term. Refusing to allow an association representative to attend would constitute an unlawful unilateral change.

## Conclusion

The right to representation is available to virtually every civilian employee in the United States. The Weingarten Decision helps clarify the correct procedures that should be followed during disciplinary meetings.

As an employee, a supervisor or as an association representative, it is your responsibility to be aware of your rights and responsibilities and to act accordingly.

## Educating Members

Unlike Miranda, another landmark Supreme Court case, Weingarten does not require notice at the time of questioning – or, in this case, an investigatory interview. This means that the Employer is not required to inform the employee that he or she has a right to Union representation. For the union and the steward, this means educating their membership by explaining these rights. Many local union contracts contain Weingarten in their language, such as this example:

The employer recognizes the employee's right to be given representation by a steward, or a designated alternate, at any investigatory interview. The employer will remind the employee of this right at the time that the employer requests the investigatory interview.

Many local unions provide their members with wallet-sized cards that read: If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative, officer, or steward be present at this meeting. Until my representative arrives, I choose not to participate in this discussion.

## Weingarten and Public Employees

The original applications of Weingarten covered only those employers under the National Labor Relations Act; therefore, it did not address public employers. However, each state has its own laws for public sector employees – and, each state will have different views on the right to union representation. For example, California public employees have the same rights during an investigatory interview, as do private sector employees. In any case, public sector employees are protected by the due process tenets provided in the Fifth and Fourteenth Amendments of the U.S. Constitution.

Note: Weingarten Cards (English and Spanish) can be ordered through the Teamsters Education Department.



## Steward Rights

Employers sometimes assert that the only function of a steward at an investigatory interview is to observe the discussion; in other words, to be a silent witness. This is incorrect. The steward must be allowed to advise and assist the employee in presenting the facts. When the steward arrives at the meeting:

- The supervisor or manager must inform the steward of the subject matter of the interview: in other words, the type of misconduct being investigated. 197
- The steward must be allowed to have a private meeting with the employee before questioning begins. 198
- The steward can speak during the interview, but cannot insist that the interview be ended. 199
- The steward can object to a confusing question and can request that the question be clarified so that the employee understands what is being asked. 200
- The steward can advise the employee not to answer questions that are abusive, misleading, badgering, or harassing. 201

### Weingarten Card

(If called to a meeting with management, read the following or present this card to management when the meeting begins.)

If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative, officer, or steward be present at this meeting.

Until my representative arrives, I choose not to participate in this discussion.

**\*\*\*You can and should print out the last two pages of this document on some card stock paper. Print one side then flip over and print the other page on the back. Cut the now two sided card out and share them with your Sisters and Brothers.**

### NLRB CHARGES

An employer's failure to comply with a worker's request for union representation, or a violation of any other

Weingarten right, is an unfair labor practice. Unless a grievance is pending on the matter, the NLRB does not defer Weingarten charges. 203

## QUESTIONS AND ANSWERS

### STEWARD'S REQUEST

Q. If I see a worker being questioned in a supervisor's office, can I ask to be admitted?

A. Yes. A steward has a right to insist on admission to a meeting that appears to be a Weingarten interview. 204

If the interview is investigatory, the employee must be allowed to indicate whether he or she desires the steward's presence. 205

### COERCION

Q. An employee, summoned to a meeting with her supervisor, asked for her steward. The supervisor said,

"You can request your steward, but if you do, I will have to bring in the plant manager and you know how temperamental she is. If we can keep it at this level, things will be better for you." Is this a Weingarten violation?

A. Yes. The supervisor is raising the specter of increased discipline to coerce an employee into abandoning her Weingarten rights. 206

### CAN EMPLOYEE REFUSE TO GO TO MEETING?

Q. A supervisor told an employee to report to the personnel office for a "talk" about his attendance. The employee asked to see his steward but the supervisor said no. Can the employee refuse to go to the office without seeing his steward first?

A. No. Weingarten rights do not arise until an investigatory interview actually begins. The employee must make a request for representation to the person conducting the interview. 207 An employee can only refuse to go to a meeting if a supervisor makes clear in advance that union representation will be denied at the interview. 208

### MEDICAL EXAMINATION

Q. Our employer requires medical examinations when workers return from medical leaves. Can an employee insist on a steward during the examination?

A. No. A run-of-the-mill medical examination is not an investigatory interview. 209

### LIE DETECTOR TEST

Q. Do Weingarten rights apply to polygraph tests?

A. Yes. An employee has a right to union assistance during the pre-examination interview and the test itself. 210

### SOBRIETY TEST

Q. If management asks an employee if he will submit to a test for alcohol, does Weingarten apply?

A. Yes. The employee must be allowed to consult with a union representative to decide whether or not to take the test. 211

## LOCKER SEARCH

Q. If a guard orders an employee to open a locker, can the employee insist on a steward being present?

A. No. A locker search is not an investigatory interview. 212

## COUNSELING SESSION

Q. An employee was given a written warning for poor attendance and told she must participate in counseling with the human relations department. Does she have a right to a union steward at the counseling sessions?

A. This depends. If notes from the sessions are kept in the employee's permanent record, or if other employees have been disciplined for what they said at counseling sessions, an employee's request for a steward would come under Weingarten.<sup>213</sup> But if management gives a firm assurance that the meetings will not be used for discipline, and promises that the conversations will remain confidential, Weingarten rights would probably not apply. <sup>214</sup>

## PRIVATE ATTORNEY

Q. Can a worker insist on a private attorney before answering questions at an investigatory interview?

A. No. Weingarten only guarantees the presence of a union representative. <sup>215</sup>

## TELEPHONE INTERVIEW

Q. Over the weekend, a supervisor called a worker's home to ask about missing tools. Did the worker have to answer the questions?

A. No. Weingarten applies to telephone interviews. An employee who fears discipline can refuse to answer questions until the employee has a chance to consult with a union representative. <sup>216</sup>

## STEWARD OUT SICK

Q. If a worker's steward is out sick, can the worker insist that a Weingarten interview be delayed until the steward returns?

A. Usually, no. Management does not have to delay an investigation if another union representative is available to assist the employee. <sup>217</sup>

## INTERROGATION OF A STEWARD

Q. If a steward is called in by supervision to discuss her work, can she insist on the presence of another steward?

A. Yes. Stewards have the same rights to assistance as other employees.<sup>218</sup>

## SHOP MEETING

Q. When management calls a meeting to go over work rules, do employees have a right to demand a union representative?

A. No. Weingarten rights do not arise unless management asks questions of an investigatory nature. <sup>219</sup>

## REMEDIES

Q. If management rejects a worker's request for union assistance at an investigatory interview, induces him to confess to wrongdoing, and fires him, will the NLRB order the worker reinstated because of the Weingarten violation?

A. No. The NLRB considers reinstatement to be an unwarranted "windfall" for an employee who confesses to serious misconduct. <sup>220</sup>

The usual Weingarten remedy is a bulletin-board posting in which the employer acknowledges that it violated the Weingarten rules and promises to obey them in the future.

NOTE: The remedy is different when an employee is discharged for requesting a steward or refusing to answer questions without one. In such cases, the NLRB orders reinstatement with back pay. 221

A make-whole remedy is also imposed if an employee is demoted, transferred, or loses privileges because of a request for union representation.

#### RECORDING THE INTERVIEW

Q. Can a supervisor make an audio recording of an investigatory interview?

A. This depends. The Weingarten decision itself does not forbid an employer from tape recording an investigatory interview. But, if this represents a new policy on the part of the employer, the steward can object on the grounds that the union did not receive prior notice and an opportunity to bargain. 222

#### PARTICULAR REPRESENTATIVE?

Q. If an employee asks to be represented by her chief steward instead of her departmental steward, must management comply?

A. Usually, yes. If two representatives are equally available, an employee's request for a particular representative must be honored. 223

#### QUESTIONS ABOUT OTHERS

Q. If a worker is summoned to a meeting and asked about the role of other employees in illegal activities, can he insist on assistance from a union representative?

A. Yes. Although the employee may not be involved in wrongdoing himself, he risks discipline if he refuses to inform on others or admits that he was aware of illegal activities. Because what he says at the meeting could get him into trouble, he is entitled to union representation.

#### OBSTRUCTION

Q. The company is interviewing employees about drug use in the plant. If I tell my people not to answer questions, could management go after me?

A. Yes. A union representative may not obstruct a legitimate investigation into employee misconduct. 224

If management learns of such orders, you could be disciplined.

#### Notes

195. NLRB v. J. Weingarten, Inc. 420 U.S. 251, 88 LRRM 2689 (U.S. Sup. Ct. 1975).

196. Baton Rouge Water Works Co., 246 NLRB 995, 103 LRRM 1056 (1979).

197. Pacific Telephone and Telegraph Co., 262 NLRB 1048, 110 LRRM 1411 (1982), enforced in part, 711 F.2d 134, 113 LRRM 3529 (9th Cir. 1983).

198. U.S. Postal Service, 303 NLRB 463, 138 LRRM 1339 (1991).

199. See Southwestern Bell Telephone Co., 251 NLRB 612, 105 LRRM 1246 (1980); New Jersey Bell Telephone Co., 308 NLRB 277, 141 LRRM 1017 (1992); Yellow Freight System, Inc., 317 NLRB 115; 149 LRRM 1327 (1995) (steward may be issued a warning letter for repeatedly interrupting interview, profanity, and pounding on manager's desk).
200. U.S. Postal Service, 288 NLRB 864, 130 LRRM 1184 (1998); NLRB v. J. Weingarten, Inc. 420 U.S. 251, 260, 88 LRRM 2689 (U.S. Sup. Ct. 1975).
201. New Jersey Bell Telephone Co., 308 NLRB 277, 141 LRRM 1017 (1992).
202. NLRB v. J. Weingarten, Inc. 420 U.S. 251, 88 LRRM 2689 (U.S. Sup. Ct. 1975).
203. See Amoco Oil Co., 278 NLRB 1, 2-3, 121 LRRM 1308 (1986).
204. ILGWU v. Quality Mfg. Co., 420 U.S. 276, 88 LRRM 2698 (U.S. Sup. Ct. 1975).
205. Appalachian Power Co., 253 NLRB 931, 106 LRRM 1041 (1980). An employee's silence, after a steward asks to be present, may be considered agreement with the request. See Colgate Palmolive Co. 257 NLRB 130, 107 LRRM 1486 (1981).
206. Southwestern Bell Telephone Co., 227 NLRB 1223, 94 LRRM 1305 (1977).
207. Joseph F. Whelan Co., 273 NLRB 340, 118 LRRM 1040 (1984); Roadway Express, 246 NLRB 1127, 103 LRRM 1050 (1979).
208. See Glomac Plastics, Inc., 234 NLRB 1309, 97 LRRM 1441 (1977), enforced, 592 F.2d 94, 100 LRRM 2508 (2d Cir. 1979); Interstate Security Services, Inc. 263 NLRB 6, 110 LRRM 1535 (1982).
209. U.S. Postal Service, 252 NLRB 61, 105 LRRM 1200 (1980).
210. Consolidated Casinos Corp., 266 NLRB 988, 1008-10, 113 LRRM 1081 (1983).
211. System 99, 289 NLRB 723, 131 LRRM 1226 (1988).
212. See E.I. du Pont de Nemours & Co., 100 LRRM 1633 (Advice Memorandum 1981) (car search); Chrysler Corp. (Advice Memorandum 1981) (cited in Walnut Hill Convalescent Home, 114 LRRM 1255 (Advice Memorandum 1983) (handbag search)).
213. Good Hope Refineries, Inc., 245 NLRB 380, 382-84, 102 LRRM 1302 (1979).
214. Amoco Chemicals Corp., 237 NLRB 394, 396-98, 99 LRRM 1017 (1978).
215. TCC Center Companies, 275 NLRB 604, 119 LRRM (1985).
216. See generally Pacific Southwest Airlines, Inc., 242 NLRB 1169, 1175-76, 101 LRRM 1366 (1979) (ALJ's conclusion that telephone interview is covered by Weingarten, not rejected by Board).
217. Coca-Cola Bottling Co. 227 NLRB 1276, 94 LRRM 1200 (1977).
218. Keystone Consolidated Industries, Inc., 217 NLRB 995, 89 LRRM 1192 (1975).
219. Northwest Engineering Co., 265 NLRB 190, 111 LRRM 148 (1982).
220. Taracorp, Inc. 273 NLRB 221, 117 LRRM 1497 (1984).
221. Safeway Stores, 303 NLRB 989, 138 LRRM 1007 (1991).

222. Cf. Pennsylvania Telephone Guild, 277 NLRB 501, 120 LRRM 1257 (1985), enforced, 799 F.2d 84, 123 LRRM 2214 (3d Cir. 1986).

223. Consolidated Coal Co., 307 NLRB 976, 977-78, 140 LRRM 1248 (1992).

224. See Manville Forest Products Corp., 269 NLRB 390, 115 LRRM 1266 (1984); Cook Paint & Varnish Co., 246 NLRB 646, 102 LRRM 1680 (1979). See also Service Technology Corp., 196 NLRB 845, 80 LRRM 1187 (1972) (employee has no right to refuse to answer questions about misconduct he has been involved in or witnessed).

“If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I request that my steward or union officer be present at the meeting. Without representation, I choose not to answer any questions.”

(This is my right under the Supreme Court Weingarten Rules)

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If the Steward On Call is not available, contact the Business Representative. If they can not be reached, contact any member of the Executive Board or the Call Steward 336-399-7382  
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## **Rights and Policy Statements Checkoff**

Please sign and return when you have finished reading these documents.

I have received, read, and understand the following documents supplied by I.A.T.S.E. Local 635:

**Union Member Rights**  
**Substance Abuse Policy**  
**Fall Protection Guidelines**  
**Discrimination and Harassment Policy**  
**Weingarten Rules with Printable Card**

I pledge to follow the examples presented. I further agree to abide by the rules outlined and consent to be governed thereby in the conduct of my trade and in my relationship with Local 635.

-----  
**Signature**

-----  
**Date**