

Article 24.04 - Investigatory Interview Guidelines



The Employer must tell the Employee the nature of the interview beforehand.

If the Employee reasonably believes the interview may result in discipline, the Employee must **ask** the Employer for union representation. This is known as the Weingarten Right.

The Employer has to 1) grant the request; 2) stop the interview; or 3) offer the Employee the choice between continuing the interview unaccompanied by a Steward or having no interview at all.

Once the Employee requests union representation, the Employee is entitled to meet with the Steward before the interview begins. If the Employer refuses the Employee's request for union representation because the Employer decides that the Employee does not have

reasonable cause to believe that she/he could be disciplined as a result of the interview, the Steward should remind the employer that the Union has a Duty to Represent Bargaining Unit Employees under the Collective Bargaining Law. If the Employer prevents the Union from doing its duty then the Employer opens itself to an accusation that it caused the Union to violate its duty. This action could result in an Employer Unfair Labor Practice ruling.

The Steward can also ask the Employer the nature of the interview beforehand.

Generally, the Employer will notify the Employee of the interview a few hours before it is to take place. The Steward and the Employee should meet together before the interview in a **pre-interview consultation**.

Request 10-15 minutes release time for the pre-interview consultation.

In the pre-interview consultation, the Steward should discuss the Employer's accusations. The Steward should ask the Employee for his/her explanation of the situation and ask for any documents or other evidence that support the Employee's explanation.

In the pre-interview consultation, the Steward should explain what will happen in the investigatory interview. The Employee should not answer a question until the Employer investigator finishes the question. Counsel the Employee only to answer the question asked, not to get angry and also to tell the truth.

In the pre-interview consultation, the Steward must determine whether criminal charges could be brought against the Employee. If criminal charges are possible, the Steward should explain to the Employee about the Garrity warning.

The GARRITY WARNING - If a criminal charge is possible, the Employee and/or the Steward should get the Employer to promise that the Employee's statements in the

investigation won't be used against the Employee in future criminal proceedings. If the Employer refuses to give this guarantee, the Employee doesn't need to answer the questions. This is the Garrity warning.

In the investigatory interview, the Employee and/or the Steward can request the Garrity warning be put in writing. The Employer usually will do this though they don't like it. If the Employer refuses to put it in writing, please write yourself a note that Garrity was given and keep the note in the Employee's file.

In the pre-interview consultation, the Steward should tell the Employee that in a criminal investigation, the Employee can have an attorney present. Before the Employee speaks to the State Highway Patrol, the Employee should talk to an attorney. At the criminal investigation, the Employee should make sure that Miranda rights are given. The Steward has no right to attend such a criminal investigation, UNLESS a management person is also attending the investigation.

In the pre-interview consultation, the Steward should not counsel the Employee to be non-cooperative in the investigatory interview.

However, if there will also be a criminal investigation into the same facts & the Employer refuses to give the Employee the requested Garrity warning, the Employee can refuse to answer questions.

In the pre-interview consultation, tell the Employee the type of discipline usually given for the violation allegedly committed.

In the investigatory interview, the Employer can **not** demand that the Steward be a **silent witness**.

No investigatory interview should be conducted by the Employer Representative with the State Highway Patrol in the room. If both are in the room, take the Employer Representative aside and explain to them about a person's right to remain silent and not incriminate themselves before the State Highway Patrol.

The Steward can not turn the investigatory interview into an adversarial proceeding. Don't start fighting with the interviewer.

The Steward can assist the Employee in the interview by clarifying the Employer's questions. If the questions are like "Do you still beat your spouse?" the Steward can ask the Employee, "Do you understand what the interviewer is asking you?" Then rephrase the question.

In the investigatory interview, the Steward has to be careful about interrupting the Employer's questions because it can be seen as interfering with an investigation. If the Employer is obviously badgering the Employee by asking the same question three or more times in a row, the Steward should use common sense and calmly tell the Employer that the Employee has already answered the question.

If the need arises because the Employee is getting emotionally upset or confused, ask the Employer if you can caucus with the Employee for a few minutes.

Before the investigatory interview ends, the Steward can add anything that the Employee has neglected to mention. The Steward can **explain** an Employee's answers. Make sure that you mention all clarifications, additions and mitigating

circumstances that the Employee forgot to mention **before** the investigatory interview ends.

If the Steward is threatened with discipline for his/her behavior in the investigatory interview, the Steward should carefully assess the situation. If the Steward feels under attack, please ask for a break. If the Steward needs to bounce ideas off a more experienced person, then the Steward could try to reach the Union President or Chief Steward to talk about what is happening (or the Staff Representative if the President or Chief Steward is not available). If the Steward is unable to reach anyone, the Steward should note the threat of discipline. The Steward must stay calm. If the Steward reasonably believes that he/she will be disciplined, then the Steward should decide whether he/she should find another Steward to provide representation in the rest of the current interview or any later interviews associated with the incident under investigation. After the investigatory interview, the Steward should notify the Chapter President of the problem with the Employer Representative conducting

the interview so that the Chapter President can discuss it with Management.

Make an internal file for each person's investigatory interview and document what occurred during the investigatory interview - including a Garrity warning, copies of any evidence submitted, any discipline threatened against the Steward, and notes of the meeting.

REFERENCES:

Article 24.04

Arbitration #: 799; 1006

Fact Sheet #: 170; 200

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