

Hello NWP Reps and Members:

Welcome to LR Chronicles number 7. As promised to you in LR Chronicles number 6, this edition has to do with another type of meeting with management. This is completely different from the "Formal Discussion" which I covered in the last edition. This version of the LR Chronicles explains the rights of employees regarding what is termed a "Weingarten" or "Investigatory" meeting. A Weingarten meeting is covered under Federal Law at 5 USC 7114(a)(2)(B) and your 2003 collective bargaining agreement in Article 6, Section 1.

5 USC 7114(a)(2)(B) states "An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—any examination of an employee in the unit by a representative of the agency in connection with an investigation if—the employee reasonably believes that the examination may result in disciplinary action against the employee; and—the employee requests representation."

Article 6, Section 1 of your collective bargaining agreement states "When it is known in advance that the subject of a meeting is to discuss or investigate a disciplinary, or potential disciplinary situation, the employee shall be so notified of the subject matter in advance. The employee shall also be notified of his/her right to be accompanied by a Union representative if he/she so desires, and shall be given a reasonable opportunity both to obtain such representation, and confer confidentially with the representative before the beginning of the meeting. If during the course of a meeting it becomes apparent for the first time that discipline or potential discipline could arise, the Agency shall stop the meeting and inform the employee of his/her right to representation if he/she so desires, and provide a reasonable opportunity to both obtain representation and confer confidentially before proceeding with the meeting, if requested. The Union retains the right to determine its representatives in accordance with Article 2 of this Agreement.

This Section applies to meetings conducted by all Management representatives, including DOT/FAA security agents, EEO investigators and agents of the Inspector General. The above provisions shall apply to meetings conducted by the National Transportation Safety Board (NTSB) to the extent the provisions are consistent with NTSB regulations and procedures. Additional representational rights in operational error/deviation situations are covered in Article 64 of this Agreement.”

As you can see, your collective bargaining agreement expands on the law. It requires the agency to notify you both of the subject matter in advance of the meeting and to notify you that you have a right to Union representation if you so desire. However, you STILL must request the Union representation if you want it. It also requires the agency to allow you a reasonable amount of time to obtain such representation and to confer confidentially with the representative prior to the meeting. Per FLRA case law and our collective bargaining agreement, ONLY the Union can choose its representatives, therefore if management attempts to tell you who your rep is going to be based on who may or may not be available in their mind, that is a violation of both. Additionally, in accordance with FLRA case law, the meeting can be delayed to obtain representation and to confer confidentially with the representative as long as the meeting is not “unduly” or “unreasonably” delayed. However, the FLRA states that “unduly” or “unreasonably” delayed means that an employer need not postpone interviews because a particular Union representative is unavailable either for personal or other reasons for which the employer is not responsible and where another representative is available whose presence could have been requested by the employee in the absent representative’s place. This is very important. If you request a particular representative (your area rep) and he/she is on leave, but there is another Union representative available at the facility, the agency does not have to postpone the meeting.

Unlike the “Formal Discussion”, there is no requirement on the part of the agency to notify the Union in advance of a Weingarten meeting. It is the employee’s choice on whether or not the Union attends this type of meeting. At the outset of the meeting, if you decline Union representation, you may change your mind at any time as long as you make clear to management that you NOW want a Union Representative present.

Please be aware of a very important caveat here; if you choose to not have a Union representative in the beginning and subsequently change your mind, management may use all information obtained from the employee up to the point where Union representation was requested. Once you have made this request, management has three choices:

- Grant the request;
- Discontinue the interview; OR
- Offer the employee the choice of continuing the interview without representation or have no interview at all.

If the agency denies the request for Union representation and continues to ask questions, they have committed an Unfair Labor Practice (ULP).

The FLRA has issued Case Law regarding the "reasonableness standard" contained in 5 USC 7114(a)(2)(B)(i), which states "the employee reasonably believes that the examination may result in disciplinary action against the employee. When judging "reasonable belief", the FLRA applies an objective standard. This means "whether a reasonable employee in the same circumstances would conclude that discipline might result, rather than whether the employee involved was leery of discipline."

There is another type of meeting that could fall into this category as well, that being a meeting where possible "criminal proceedings" may result. This type of meeting is covered by Article 6, Section 2 of your collective bargaining agreement which states "In an interview where possible criminal proceedings may result and the employee is the subject of the investigation, the employee will be informed of the general nature of the matter (i.e., criminal or administrative misconduct) being investigated, and, upon request, be informed whether or not the interview is related to possible criminal misconduct by him/her. The employee will be required to answer questions only after he/she has been informed that he/she must answer questions specifically related to their job performance or face disciplinary action. Any answers given under these circumstances are considered involuntary. Such answers may not be used against the employee in a subsequent criminal proceeding, except for possible perjury charges for giving any false answers while under oath. When a written declination of criminal prosecution is received from the appropriate authority, the employee will be provided a copy."

This type of meeting is much different in the fact that you may be prosecuted for some "criminal activity" and as such, it is of the utmost importance for you to have a private attorney attend such a meeting with you and act as your representative. If, during a meeting it becomes apparent for the first time that it is a "criminal proceeding" NATCA must excuse themselves and advise the agency representative that the employee needs time to find an attorney and to reschedule the meeting.

To summarize, the following are the requirements and facts regarding a "Weingarten" (Investigatory) meeting:

- The Union has a right to be present if BOTH of the following take place:
 1. The employee reasonably believes that disciplinary action may result;
 2. The employee requests such representation.
- The agency must notify the employee of the subject matter in advance
- The agency shall notify the employee of the right to Union representation. (The employee still must request Union representation)
- The employee shall be given a reasonable opportunity to obtain such representation
- The employee shall be given a reasonable opportunity to confer with the Union representation before the meeting
- If the employee declines Union representation in the beginning, may change their mind at any time
- The Weingarten rights of an employee do not only apply to Air Traffic Management officials. These rights extend to any meeting conducted by the following:
 1. FAA/DOT Security Agents
 2. EEO Investigators
 3. Agents of the Inspector General
 4. NTSB (provided it is consistent with NTSB regulations and procedures)

I would like to give you one last word regarding this very important topic. I cannot stress to you enough or in terms strong enough how very important it is for ALL employees to request Union representation for ALL meetings that fall into this category. In today's FAA, they will not think twice about disciplining you for anything. Having a Union representative accompany you not only ensures that your rights are protected, but it also provides a witness for your protection on anything said in that meeting.

If there are any questions, please contact your FACREP.

Mike Hull
NWP LR Lead