

Letter carrier rights and warnings when questioned



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One of the important rights letter carriers have is the right to have a steward present when questioned by management, the Office of Inspector General (OIG) or postal inspectors if asked a question that they believe may reasonably lead to discipline. This right is known as the Weingarten rule or Weingarten rights. Weingarten rights have been afforded to employees because of the 1975 U.S. Supreme Court ruling *NLRB v. J. Weingarten*, 420 U.S. 251.

Normally, managers will have a pre-disciplinary interview or an investigatory interview with a carrier if the manager suspects the carrier did something for which he or she should be disciplined. If you are given one of

these interviews, your manager is looking for information to use against you so he or she can discipline you.

All letter carriers have Weingarten rights, which means the right to have a union steward present during a meeting in which management asks you questions that you believe could lead to discipline. Every letter carrier should follow this advice:

If called to a meeting with management, U.S. postal inspectors or an Office of Inspector General (OIG) agent, read the following statement to the person you are meeting with before the meeting starts:

"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. Without my union representative present, I respectfully choose not to answer any questions or participate in this discussion."

You have this right and should exercise it anytime you are asked a question that could lead to discipline regardless of how or where the question is asked. Normally, this will take place in a closed-door meeting as I described above. However, it also could be on the workroom floor or through a phone call or text message. Regardless of how, when or where a question is asked, you have Weingarten rights and should invoke them.

Weingarten rights differ from Miranda rights—management is not required to inform you of the right to representation and your steward cannot exercise them for you. You must ask for representation. If you don't ask at the beginning of an interview, you can ask for representation at any point you reasonably believe that the question could result in discipline.

Whether or not an employee's belief is "reasonable" depends on the circumstances of each case. Some cases are obvious, such as when a supervisor asks an employee whether he discarded deliverable mail.

If you are asked a question concerning something you allegedly did wrong, you should request a steward.

Weingarten also gives you the right to a pre-interview consultation with a steward. In an interview, you have the right to the steward's assistance. If you don't understand a question being asked or have any other questions, you should ask the steward present during the interview to clarify.

Management will sometimes tell you that the *Employee and Labor Relations Manual (ELM)* Section 665.3 requires all postal employees to cooperate with postal investigations. This is true. However, you still have the right under Weingarten to have a steward present before answering questions. In the event that a steward is not available or if a steward is not present after you have asked for one, you should respond that you will be happy to cooperate in any investigation, but you will answer questions only once a steward is provided.

If you are interviewed by a postal inspector or OIG agent, you may be given additional warnings. Most people are familiar with Miranda warnings from television, but there are others that every letter carrier should be familiar with. Garrity and Kalkines are two other types of warnings:

- A Garrity warning advises suspects of their criminal and administrative liability for any statements made, but also advises suspects of their right to remain silent on any issues that may implicate them in a crime.
- A Kalkines warning requires employees to make statements and cooperate, even if it could lead to being disciplined or discharged, but provides criminal immunity for their statements.

If a carrier is given one of these warnings, and there is reason to believe that the carrier may be subject to criminal prosecution, the individual should consult an attorney immediately in addition to exercising his or her Weingarten rights.

For more information on Weingarten rights and the warnings mentioned above, please see the recently updated 2019 *Letter Carrier Resource Guide* on the NALC website at nalc.org/resourceguide. This information is thoroughly covered on pages 23-28 of this guide.

Happy
Holidays!

