

NLRB rules non-union employees don't have Weingarten rights

The National Labor Relations Board (NLRB) ruled recently that non-unionized employees do not have the legal (Weingarten) right to have a co-worker present for investigative interviews conducted by their employers. With this ruling, the NLRB reverses its previous position.

The Background

In 1975, in a NLRB lawsuit against Weingarten retail stores, the U.S. Supreme Court ruled that unionized employees have a right to have a union representative present during meetings when they are being investigated by management and reasonably believe that the interviews may result in disciplinary action.

In 1982, the NLRB extended the so-called Weingarten rights to non-union employees. However, in 1985, the NLRB withdrew the Weingarten rights from non-union employees.

In 2000, in a claim against the Epilepsy Foundation, the NLRB again granted Weingarten rights to non-unionized employees.

The Case

In October 2001, IBM received a sexual harassment complaint against three of its non-unionized employees. To investigate the complaint, IBM interviewed each of the three employees individually. For the initial interview, none of the employees requested that a co-worker be present. However, they all requested that a co-worker be present for the subsequent interviews. IBM rejected their requests and, a short time later, fired them all. The three employees then filed charges of unfair labor practices. An administrative law judge ruled that the employees were entitled to Weingarten rights and that IBM had violated their rights by denying their requests to have a co-worker present at their interviews.

IBM appealed to the NLRB. The NLRB agreed with IBM, ruling that Weingarten rights do not extend to non-union employees. The NLRB explained its position:

1. Co-workers, unlike union representatives, do not represent the interests of the entire workforce.
2. Co-workers cannot redress the imbalance of power between employers and employees because they have no collective bargaining authority.
3. Co-workers do not have the same skills as union representatives.
4. The presence of a co-worker may compromise the confidentiality of information. Unlike employers and union representatives, coworkers have no legal obligation to keep sensitive information private.

The NLRB said that workplaces have changed and employers have an increased need for investigative interviews. Employers must now perform more investigations to address allegations of workplace discrimination, sexual harassment, workplace violence, corporate abuses, and fiduciary lapses, as well as threats of terrorist attacks.

What this Ruling Means for Counties

Counties are no longer required to grant a non-unionized employee's request for a co-worker to be present during an investigative interview that might result in discipline. However, counties should note that the NLRB has reversed its position on this issue several times and nothing prohibits them from reversing it again.

Note also that this ruling does not mean that an employer can disregard any procedures set out in their personnel manual regarding this topic.

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