

You Have the Right to Have an AAUP Representative Accompany You to an Investigatory Meeting that May Lead to Discipline

An issue arose recently in which a Department Chair set a meeting with a faculty member to discuss allegations of wrongdoing by the faculty member. That faculty member contacted AAUP, and AAUP arranged for that faculty member to have an AAUP faculty representative with him at the meeting. A misunderstanding then arose, in which it appeared to the AAUP representative that the Chair was refusing to allow the AAUP representative to attend the meeting, though the Administration believes that the Chair gave the faculty member the choice of proceeding without his AAUP representative at that time or having the meeting postponed to a later date with the AAUP representative.

As a result of this misunderstanding, AAUP initiated discussion with the Administration to prevent such misunderstandings from occurring in the future. As a result of this discussion between AAUP and UMDNJ Administration, we have confirmed that the Administration recognizes and will act in accordance with the law with regard to the rights of employees who are represented by unions, most importantly, with the rights of all faculty members and librarians represented by AAUP. The Administration has committed to send a memo reminding Department Chairs and other relevant members of the Administration of what are generally termed "Weingarten Rights." We are hopeful that, with central Administration educating Chairs and other relevant supervisory personnel, and by AAUP educating you, we will avoid misunderstandings of this kind in the future.

[*NLRB v. J. Weingarten, Inc.*](#) is a 1975 case in which the U.S. Supreme Court decided that employees who were members of unions under the National Labor Relations Act (NLRA) have a right to union representation at an investigatory interview which the union employee reasonably believes may result in the imposition of discipline. While Weingarten does not directly apply to UMDNJ faculty and librarians in the AAUP bargaining unit because we are not constituted under the NLRA, New Jersey State Law has provisions similar to the NLRA in the New Jersey Employer-Employee Relations Act, and in 1979, the New Jersey Public Employment Relations Commission adopted the "Weingarten Rights" as applicable to NJ public employees who are represented by unions.

In 1996, in [*Matter of University of Medicine and Dentistry*](#), the New Jersey Supreme Court ruled on the application of "Weingarten Rights" at UMDNJ. The Court upheld the right of a union member at UMDNJ to have union representation at an investigatory interview, when the member has a reasonable belief that the investigation may result in disciplinary action. The Court followed the Weingarten decision in defining the extent of the representation permitted.

Thus, by law, union representation must be permitted:

- When the interview is investigatory, rather than for the purpose of communicating disciplinary action which has already been determined;
- When the faculty member or librarian requests union representation;
- To allow the union representative to observe, assist and clarify facts for the faculty member or librarian during the interview, or to suggest other employees who may have knowledge of the facts;
- To the extent that the representative does not interfere with the questioning or prevent the employer from hearing the faculty member's or librarian's own account of the matter under investigation.

In addition, AAUP and the Administration agreed to the following. As a courtesy, the faculty supervisor should give the faculty member or librarian a reasonable period of time to arrange for union representation at an investigatory meeting, if the faculty member or librarian so desires. Also, as a courtesy, the faculty member or librarian should give the Chair or other supervisor prior notice that a union representative will be present at an investigatory meeting. We further agreed that, if no advance notice is given that a union representative will be present, the Chair may reschedule the meeting with the faculty member or librarian to permit attendance by additional University personnel as well as the union representative.

One hopes never to need to rely on "Weingarten Rights," but its good to know what your rights are, just in case.