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DATE: April 8, 2003

PERSL #1376

TO: Human Resource Directors/Designees
Labor Relations Directors/Designees

FROM: Paul Larson *Paul A. Larson*
Deputy Commissioner
Labor Relations Bureau

RE: Right to Representation (Weingarten Right)

The purpose of this memo is to clarify when an employee has a right to union representation (Weingarten right). Weingarten rights are rights derived from a United States Supreme Court decision, which states that an employee being interviewed by management is entitled to the presence of a union representative at the time of questioning when the questioning may potentially subject the employee to disciplinary action. NLRB vs. J. Weingarten, Inc., 420 US 251 (1975).

Language in our current collective bargaining agreements incorporates the rights afforded in Weingarten by requiring that an employee be informed of their right to union representation prior to being questioned during an investigation that may lead to discipline of that employee. For unrepresented employees and employees covered by plans other than the Manager's Plan, the principle of Weingarten still applies, even though the plan does not contain such language. Please keep in mind that for this group of employees the right is not to union representation, but to have a co-worker present at such questioning. Weingarten does not apply to managers, and therefore the agency may conduct questioning of a manager in any situation without offering a representative.

The rights afforded in the collective bargaining agreements and the Weingarten ruling manifest only when the questioning of an employee could lead to discipline. There is no right of representation when an employee is questioned as a witness during an investigation, except where specifically authorized in a collective bargaining agreement or plan. For example, the collective bargaining agreement with AFSCME allows for union representation in cases of resident/patient abuse and for the complainant in investigations of sexual harassment. Furthermore, neither the contracts nor Weingarten provide an employee with a right to representation during the presentation of discipline, during a supervisory conference or during a performance review.

Although the contracts and plans contain language allowing representation during the grievance/dispute resolution process, these provisions are separate from the right of representation afforded through Weingarten.

Questions regarding whether representation is allowable in any particular situation should be directed to your Labor Relations Representative.

cc: Labor Relations Representatives