

Employee's Right to Have Union Representative Present at Meeting With Employer

DEPARTMENT OF ADMINISTRATIVE & FINANCIAL SERVICES
Bureau of Employee Relations
Telephone (207) 287-4447
FAX (207) 287-4452 TDD (207) 287-4537

No.: OSER-27

Date: August 15, 1980

Subject: Employee's Right to Have Union Representative Present at Meeting With Employer

To: All Holders of Employee Relations Manuals

From: Lanning S. Mosher, Director

INTRODUCTION

Recently our office has received inquiries regarding employees' rights to have their union representative present when being questioned by an employer or supervisor. The following questions and discussions will not only be helpful in responding to this issue, but will also help us maintain good relations with our employees. Please note that the discussion does not apply to investigations or questioning under the Complaints and Investigations article in the collective bargaining agreements.

ISSUE

The primary issue is: "May an employee when requested or ordered to attend an investigatory interview or investigatory meeting with the employer or supervisor refuse to attend the meeting unless accompanied by their union representative?" An employee may refuse to attend or may leave such a meeting unless a union representative is present when s/he reasonably fears that the interview may result in disciplinary action being taken against her/him.

DISCUSSION

I. What is the definition of reasonable fear?

The definition of this threshold requirement is based on objective, not subjective criteria. We would define reasonable fear as occurring when:

- a) Under the same conditions or situation any employee would normally fear disciplinary action; or
- b) Historically employees had been disciplined for similar actions or activities; or
- c) An employer's emphatic statement would normally be perceived by the employee as threatening (i.e., "You're going to hear about this!"); or
- d) An employee has previously been warned that future cases of inappropriate behavior or action may result in disciplinary action.

2. Is the employer or supervisor required to indicate to the employee that s/he has a right to have a union representative present?

No. The only time the union representative may be present is when the reasonable fear standard is met and when the employee requests her/his presence.

3. May an employee who attends an investigatory interview request the presence of a union representative at any point in the interview when s/he reasonably fears disciplinary action will result from the interview?

Yes.

4. What is the role of the union representative at such a meeting?

The investigatory meeting will usually result from a supervisor's desire to clarify an action taken by an employee or to question the employee about information which s/he may possess. Such a meeting or interview is not intended to be an adversarial proceeding. The primary purpose of the union rep's attendance is to assist the employee in responding to questions or to help the employee clarify questions and responses. The union representative may not present arguments on the employee's behalf to the employer or supervisor.

5. If an employee requests a meeting with the employer or supervisor to discuss her/his actions, information, etc., is s/he entitled to union representation?

Only if the employee at some point requests that the meeting be stopped and the employer persists on questioning the employee and the "reasonable fear" threshold requirement is met.

6. If an employee insists on having a union representative at an investigatory interview, is it mandatory that the employer allow the union representative to be present?

No. The employer or supervisor can indicate to the employee that there will be no meeting if s/he insists on the union representative being present. In cases where the employer chooses not to have an interview with the union representative present, and accordingly does not interview the employee, the employee loses the opportunity or benefit of clarifying her/his actions, information, etc. In such cases the employer can implement whatever measures are appropriate without holding such a meeting. However, in all circumstances, the employer or supervisor is responsible for conducting an objective investigation and meeting the standards of just cause.

7. What if a union representative is unavailable on the worksite when an employee requests her/his presence at an investigatory interview?

This area is one where common sense really has to prevail. If the employer must conduct a prompt investigation in order to resolve an existing or imminent problem and a delay in conducting an interview may reasonably be expected to jeopardize some significant interest of the department, then the employer does not have to wait for the presence of a union representative. In these cases, permit the employee to have the presence of another employee.

8. May an employee be disciplined because s/he refused to attend a meeting which s/he feared would result in disciplinary action?

No. An employee may be disciplined in accordance with contractual provisions of the contract, but not for failure to attend such a meeting.

9. Should the employer or supervisor tell the employee the purpose of the investigatory interview?

Yes.

10. Does this require that a union representative be permitted to attend employee/supervisor performance appraisal interviews?

No.