

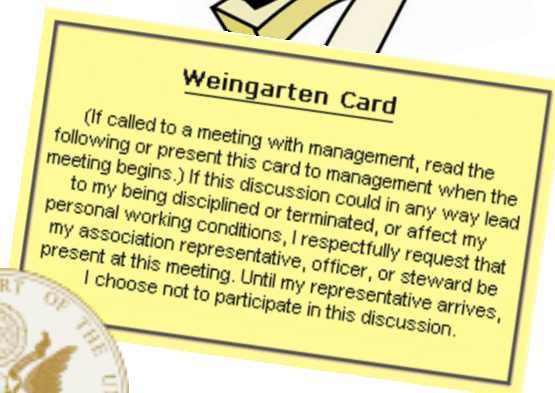
The Word

FEBRUARY 2010

NLRB VS. J. WEINGARTEN

YOU HAVE THE RIGHT

TO UNION REPRESENTATION



Weingarten Rights - Your Right to Representation

A common question of many WAWMEA members is, "What are my rights to union representation at meetings called by my supervisor?" The basic principles to remember are:

1. The employee must request the presence of a union representative. District administration or supervisors have no legal obligation to remind employees of this right.
2. An employee is entitled to representation when the discussion held in the meeting can result in disciplinary action against the employee. This applies to any dialogue and eliciting of facts about an incident or an investigation of an employee's general work performance, which could affect the employee's working conditions or job security.
3. An employee has **NO RIGHT** to representation during routine evaluation sessions or conversations merely held for the purpose of discussing work instructions or needed corrections in the employee's work performance.
4. The "no representation" rule also applies to situations where the supervisor, prior to the interview, assures an employee that no discipline is forthcoming or where the employer has already reached a final decision to impose certain discipline and the purpose of the meeting is only to inform the employee of the disciplinary action. Conversations initiated by the employee also fall under the "no representation" guideline.

An employee's rights to representation become ambiguous when an employee does not know the purpose of the meeting but suspects that the conference is not "routine." In such cases the employee is advised to ask questions of the supervisor or administrator prior to the start of the meeting, such as the purpose of the meeting and if discipline could

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occur as a result of the discussion. Then make an informed decision whether to request union representation. When in doubt, call your building RA or WAWMEA to discuss with your UniServ Director.

In the rare event the conference goes beyond the stated purpose or the tone of the supervisor or administrator becomes threatening, request the meeting stop immediately and resume when union representation is available. If ordered to remain at the meeting, inform the administrator again that you request union representation. Ask the administrator to put his/her directive to meet without representation in writing. When asked to respond to questions, state that you are unable to respond until you have consulted with your union representative. Take notes until the meeting is concluded.

Also, never provide a written or verbal statement to the police, social worker, police liaison officer, or even your administrator, involving a situation where you are accused of doing something wrong until you have consulted with WAWMEA.

KNOW THE LAW: YOUR RIGHT TO SEE AND COPY YOUR PERSONNEL FILE

All WAWMEA members have a statutory right (Wisconsin Statute 103.13) to inspect and copy the contents of their personnel files. Below are the main parts of that Wisconsin law. (WAWMEA has underlined the key parts.)

(1) Open Records. Every employer shall, upon the request of an employee, which the employer may require the employee to make in writing, permit the employee to inspect any personnel documents which are used or which have been

used in determining that employee's qualifications for employment, promotion, transfer, additional compensation, termination or other disciplinary action, and medical records, except as provided in subs. (5) and (6). An employee may request all or any part of his or her records, except as provided in sub. (6). The employer shall grant at least 2 requests by an employee in a calendar year, unless otherwise provided in a collective bargaining agreement, to inspect the employee's personnel records as provided in this section. The employer shall provide the employee with the opportunity to inspect the employee's personnel records within 7 working days after the employee makes the request for inspection. The inspection shall take place at a location reasonably near the employee's place of employment and during normal working hours. If the inspection during normal working hours would require an employee to take time off from work with that employer, the employer may provide some other reasonable time for the inspection. In any case, the employer may allow the inspection to take place at a time other than working hours or at a place other than where the records are maintained if that time or place would be more convenient for the employee.

(2) Personnel record inspection by representative. An employee who is involved in a current grievance against the employer may designate in writing a representative of the employee's union, collective bargaining unit or other designated representative to inspect the employee's personnel records which may have a bearing on the resolution of the grievance, except as provided in sub. (6). The employer shall allow such a designated representative to inspect that employee's personnel records in the same manner as provided under sub. (2).

(3) Personnel record correction. If the employee disagrees with any information contained in the personnel records, a removal or correction of that information may be mutually agreed upon by the employer and the employee. If an agreement cannot be reached, the employee may submit a written statement explaining the employee's position. The employer shall attach the employee's statement to the disputed portion of the personnel record. The employee's statement shall be included whenever that disputed portion of the personnel record is released to a 3rd party as long as the disputed record is a part of the file.

(4) Medical records inspection. The right of the employee or the employee's designated representative under sub. (3) to inspect personnel records under this section includes the right to inspect any personal medical records concerning the employee in the employer's files. If the employer believes that disclosure of an employee's medical records would have a detrimental effect on the employee, the employer may release the medical records to the employee's physician or through a physician designated by the employee, in which case the physician may release the medical records to the employee or to the employee's immediate family.

(5) Exceptions. The right of the employee or the employee's designated representative under sub. (3) to inspect his or her personnel records does not apply to:

- (a) Records relating to the investigation of possible criminal offenses committed by that employee.
- (b) Letters of reference for that employee.
- (c) Any portion of a test document, except that the employee may see a cumulative total test score

for either a section of the test document or for the entire test document.

- (d) Materials used by the employer for staff management planning, including judgments or recommendations concerning future salary increases and other wage treatments, management bonus plans, promotions and job assignments or other comments or ratings used for the employer's planning purposes.
- (e) Information of a personal nature about a person other than the employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy.
- (f) An employer who does not maintain any personnel records.
- (g) Records relevant to any other pending claim between the employer and the employee which may be discovered in a judicial proceeding.

(6) Copies. The right of the employee or the employee's representative to inspect records includes the right to copy or receive a copy of records. The employer may charge a reasonable fee for providing copies of records, which may not exceed the actual cost of reproduction.

(7) Penalty. Any employer who violates this section may be fined not less than \$10 nor more than \$100 for each violation. Each day of refusal or failure to comply with a duty under this section is a separate violation.

For more information go to:
http://www.dwd.state.wi.us/dwd/publications/erd/pdf/erd_7749_p.pdf

Bringing Out the Best in One Another

By Joe Kiriaki,
Executive Director Kenosha
Education Association

I wanted to share an article that I read last November. It included what I think are some very important perspectives in how people should be treated, regardless of their occupation. So often I'm told stories about how many of our members are approached in an unprofessional manner. Most of this has come up during conversations regarding the Evaluation Process. Our jobs are hard enough these days without having such tactics used to make matters worse. Pass this along to anyone you think needs the tips, but do it anonymously.

The article may have been written more toward a corporate and business setting although the subject matter, I think, is applicable to any workplace setting and certainly to any public school and its administrators, superintendents and principals, as well as directors of special education, pupil services, and human relations—to all who are bosses. Teachers and ESPs are bosses in their own classrooms, kitchens, buses, and buildings. What kind of boss are you? What kind of boss do you work for?

The New York Times ran the following story titled "Good Boss, Bad Boss, Which Are You?" Bad bosses tend to publicly criticize, take credit for others' work, use fear tactics, demean and punish, demand compliance with any order, play favorites, and check up on everyone's work. Bad bosses control rather than delegate, and they sometimes yell at people. If you know of someone who uses one or more of these tactics, they are likely to be a bad boss.

Good bosses inspire confidence, have integrity, and act in a humble manner. Good bosses know what they are talking about, trust their employees, and support employee independence and growth rather than control every detail of their work. The worst bosses aren't around when you need them, ask you to justify everything you do, and often say, "No, we can't do that." They rarely smile, distrust everyone, and talk about themselves a lot.

One "boss expert" tells bosses to stop immediately if they do any of the following: Fail to give employees a clear direction, say important things only once (If it's important, repeat it!), or concentrate only on shortcomings.

What's a bad boss to do to become a good boss? Here are some tips:

1. Correct people in private.
2. Give people full credit for what they do.
3. Project a caring image and mean it.
4. Temper accountability with a chance to explain.
5. Clearly define duties and deadlines.
6. Speak to everyone with respect—all the time.
7. Provide feedback and training—allow time for growth.
8. Have clearly defined, fair sanctions for misconduct.
9. Treat people fairly and equally. Don't be oppressive or suspicious—trust!
10. Encourage initiative and decision making.
11. Encourage discussion and questioning.
12. Have a fair and open complaint and dispute resolution process.
13. Provide written policies and procedures that are clear and fair.