There are several types of meetings or discussions that supervisors may have with employees, the most typical being **investigatory meetings**, **performance meetings** and **formal meetings**.

In the context of labor relations, the crux of the employee’s right to have representation at meetings and/or the union’s right to be present at meetings concerns whether or not a disciplinary action or investigation is the subject of the meeting or whether or not management is attempting to negotiate working conditions with employees. In this context, “negotiate” must be interpreted broadly, including anything from soliciting ideas for a tentative plan to announcing a final management decision.

An **investigatory meeting** involves a supervisor asking an employee questions about a conduct-related issue. At these meetings, if an employee reasonably believes that the discussion may result in disciplinary action and the employee requests representation, the employee has the right to have a representative present. This right is established under 5 USC 7114(a)(2) and has been proven in court by the Weingarten case {NLRB v. J. Weingarten 420 US 251 (1975)} and subsequent cases; therefore, these rights have commonly become known as Weingarten Rights. Under 5 USC 7114(a)(3), management is required to annually notify all BU employees of their statutory representation rights, however, there is no statutory requirement for a supervisor or manager to inform employees of their Weingarten rights prior to each and every investigatory meeting. Attached is NBC’s most recent Weingarten annual notice.

A **performance meeting** involves a supervisor discussing performance expectations or results of a performance evaluation with an individual employee. Such meetings typically include discussion of the employee’s duties as assigned in their position description. The labor statute does not cover performance-based matters, therefore, neither the employee nor the union have a right to have a representative present at such meetings. However, if the discussion involves a proposed adverse action (e.g., change to lower grade or removal) as a result of a failure in performance, under 5 USC 7513(b)(3), the employee has a right to a representative which could be a union representative, an attorney or any other representative of the employee’s choice who would not pose a conflict of interest in the matter.

A **formal meeting** includes a formal discussion involving one or more bargaining unit employees and one or more management representatives and concerns a grievance, personnel policy or practice or other general condition of employment. The labor statute {5 USC 7114(a)(2)(A)} provides that the union has a right to be present at such meetings, whether or not any employees request their presence. In this context, “formal” is defined by the amount of structure surrounding the meeting including whether it is scheduled in advance, if there was written notice of the meeting, if attendance is required, if minutes are recorded, the level of management representative(s) in attendance, the length of the discussion, etc. These factors are not all-inclusive, but if several of the factors apply to the meeting, it is considered a formal meeting.


The following series of questions is provided to assist a supervisor or manager in determining whether a meeting they are planning, to which one or more bargaining unit employee(s) will be invited or directed to attend, is covered by the Weingarten Right or the Labor Relations Statute. If you answer the questions in the order provided and act accordingly, you can be confident that your actions with regard to the meeting in question will be consistent with management’s rights and obligations under the Statute, and will not violate the union’s nor the bargaining unit employees’ rights under the Statute. If you have any questions regarding this document or your management rights and obligations under the Statute, please contact your servicing HR Specialist before inviting or directing a bargaining unit employee to attend a meeting.
HR Job Aid #LR-04-01 – Meetings Decision Aid

Question #1. Are one or more of the employees who are being invited or directed to attend the meeting included in the AFGE Local 1114 bargaining unit?

- a. No, therefore the labor statute and the Weingarten rights do not apply; schedule the meeting without any concern about the employee(s) requesting union representation at the meeting.
- b. Yes – Go to question #2.
- c. Not sure – Contact your servicing HR Specialist to verify bargaining unit status of the employee(s).

If HR advises that the employee is a non-bargaining unit (NBU) employee, see question #1 a.

If HR advises that the employee is a bargaining unit (BU) employee, see question #2.

Question #2. Is the meeting with one or more BU employee to discuss only a performance issue (performance meeting), e.g., implement or amend a performance plan; conduct a progress review; counsel regarding anything less than fully successful performance; implement a performance improvement plan; cancel a PIP?

- a. Yes, therefore, labor statute rights and Weingarten rights do not apply; you can schedule the meeting without concern about the employee requesting union representation at the meeting. See Note 1.
- b. Yes, but in addition, management will inform the employee of a performance-based decision regarding a change to lower grade or removal. In this case, the employee is entitled to have a representative present. Go to Selection B on page 4.
- c. No, go to question #3.

NOTE #1: If one or more BU employee(s) request(s) union representation at a “performance meeting”, advise the employee that there is neither a Weingarten nor other right for them to be represented at a performance meeting, and do not allow union representation at a performance meeting. If you allow a BU employee to have a union representative at a performance meeting, you may be establishing a past practice of providing the employee representation when not required by the Federal Labor Relations Statute, and the past practice could become a legal obligation that applies to you and other NBC supervisors and a legal entitlement that applies to all employees in the bargaining unit.
**Question # 3.** Is the meeting with one or more bargaining unit employee to discuss and/or gather information about a pending union grievance?

- a. No, therefore, the labor relations statute and Weingarten rights do not apply. Go to question #4.
- b. Yes, therefore, the Weingarten rights apply. Go to Selection A.

**Question # 4.** Is the meeting with one or more BU employees to discuss and/or gather information about any past, new and/or on-going on-the-job or off-duty misconduct that is suspected, alleged, admitted, etc., about which the employee could have a reasonable expectation that it could lead to disciplinary action against themselves? In notifying the employee of the meeting, you must be sufficiently clear about its purpose so that employee can make an informed choice.

- a. No, therefore, the labor relations statute and Weingarten rights do not apply. Go to question #5.
- b. Yes, therefore, the Weingarten right applies. Go to Selection A on page 4.

**Question # 5.** Is the meeting with one or more BU employee(s) to announce, discuss and/or gather information about a change in duties and/or performance plan?

- a. Yes, therefore, neither the labor statute nor the Weingarten rights apply. Go to Selection D on page 4.
- b. Yes, however, the changes in duties or performance plan may change other working conditions. Go to question #6.
- c. No, go to question # 6.

**Question # 6.** Is the meeting with one or more bargaining unit employee(s) to announce, discuss and/or gather information about a change in one or more working condition(s) or related policy that could have an adverse affect on bargaining unit employees, for example:

- reorganization or realignment that has an effect on the organizational component to which the bargaining unit employee is assigned
- change in desk or office location, size, surroundings, etc.
- change in work schedule policy
- change in overtime policy
- change in Security Procedures (key card, security awareness training, parking lot procedures), etc.
- change or establishment of dress code
- change in leave policies
- change in smoking areas
- mandatory training
- change in qualification or certification requirements

- a. Yes, this meets the definition of a formal meeting and the union has a right to be present. Go to Selection C on page 4.
- b. No, this is not a formal meeting and the union does not have a right to be present. Go to Selection D on page 4.

**NOTE #2:** This list of working conditions is not all-inclusive. Management may need to bargain with the union prior to holding such meetings depending on the nature of the issues addressed. If management is contemplating such changes, contact the HRO prior to any discussions with the union or employees.
Selections

A. If you have been referred to this option, the employee has Weingarten Rights or can request representation at the meeting. If the employee requests representation, management can respond to the employee’s request in one of three ways below:

1) Grant the request and allow a reasonable amount of time for the employee to obtain such representation. For these purposes, a “reasonable amount of time” can be several hours to 1 or 2 work days, depending on the nature of the issue being addressed and the urgency with which the meeting must be held.

2) Cancel the interview/meeting and proceed based on the information you have on hand. Be careful not to use any threatening language or mannerisms - remember that the employee’s request for representation cannot have a negative impact on the situation – it is their statutory right.

3) Offer the employee the choice between continuing the interview without a representative or having no interview at all. Be careful not to use any threatening language or mannerisms - remember that the employee’s request for representation cannot have a negative impact on the situation – it is their statutory right.

B. If you have been referred to this option, the employee has representation rights under the adverse action regulations in 5 USC 7513(b) (3). The employee has a right to a representative that could be a union representative, an attorney or any other representative of the employee’s choice who would not pose a conflict of interest in the matter. An agency may disallow a representative who would pose a conflict of interest or, if the representative is an employee of the agency, whose release from work would give rise to unreasonable costs or whose priority work assignments preclude his release.

C. If you have been referred to this option, the union has a right to be present at the meeting regardless of whether an employee requests their presence because it meets the definition of a formal meeting under the labor statute. Provide the union with advance notice of the meeting. For these purposes, an “advance notice” can be several hours to 1 or 2 work days, depending on the nature of the issue being addressed and the urgency with which the meeting must be held.

D. If, after answering all of the questions above, you have determined that neither the labor statute nor Weingarten Rights apply to the meeting to which you intend to invite or direct attendance of a bargaining unit employee, please read the following important note:

IMPORTANT NOTE: If one or more bargaining unit employee(s) request(s) union representation at a meeting not covered by the labor statute nor the Weingarten Right, advise the employee that there is neither a Weingarten nor other right for them to be represented at such a meeting, and do not allow union representation at the meeting. If you allow a bargaining unit employee to have a union representative at a meeting not covered by the Weingarten Right, you may be establishing a past practice of providing the employee representation when not required by the Federal Labor Relations Statute, and the past practice could become a legal obligation that applies to you and other NBC supervisors, and a legal entitlement that applies to all employees of the bargaining unit.