

HR Job Aid #LR-04-01 – Meetings Decision Aid

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.

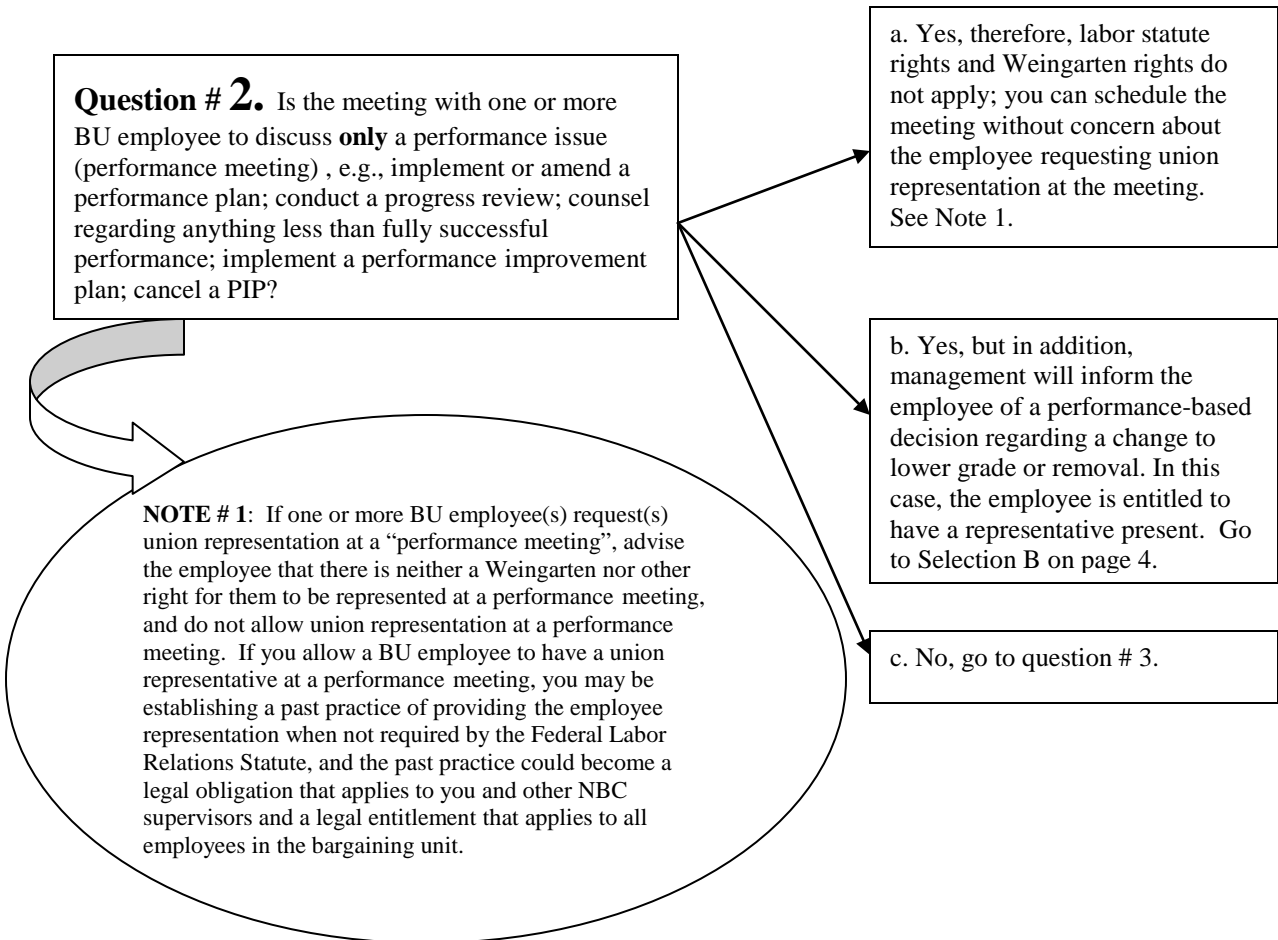
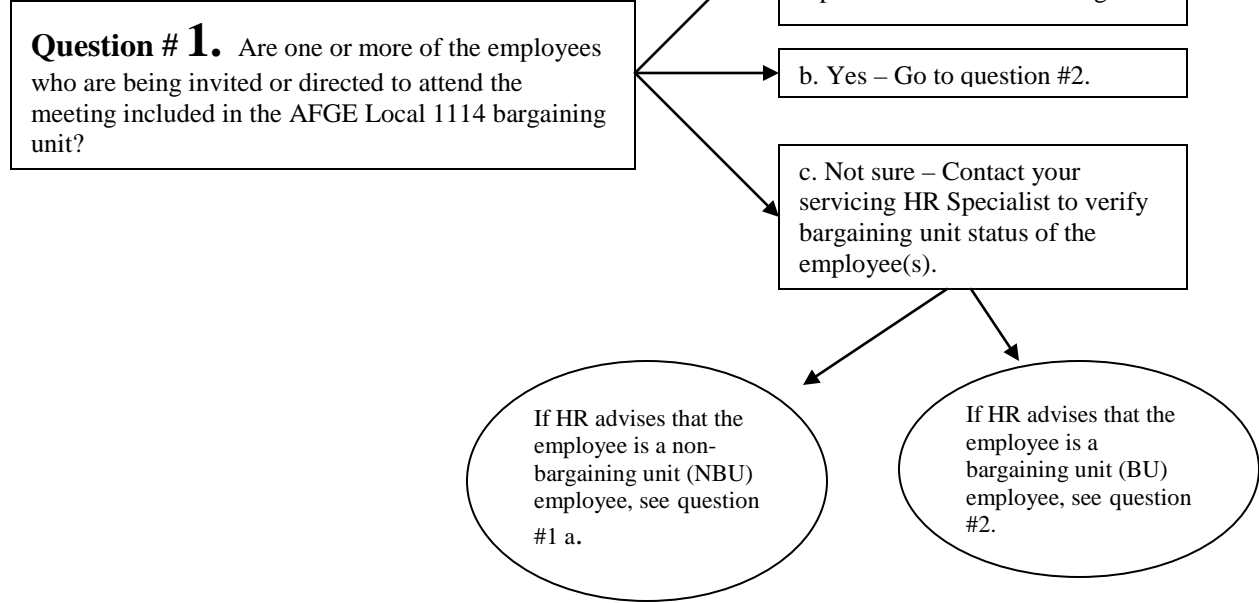
A **performance meeting** involves a supervisor discussing performance expectations or results of a performance evaluation with an individual employee. Such meetings typically include discussion of the employee's duties as assigned in their position description. The labor statute does not cover performance-based 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.

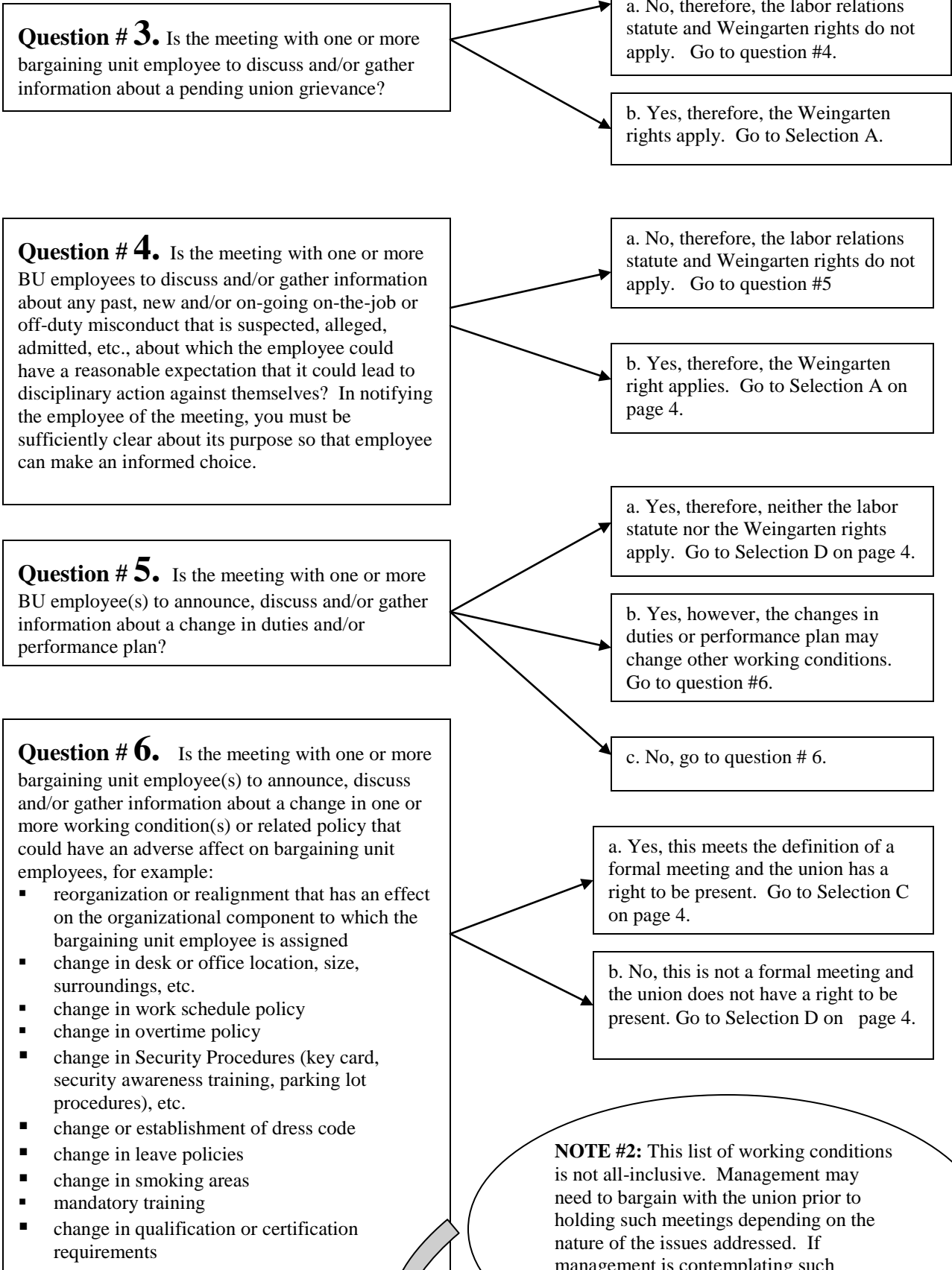
More guidance regarding meetings is provided at http://www.flra.gov/gc/guidance/gc_meet_start.html.

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.

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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 and 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 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.