



**FLRA.GOV**  
Federal Labor Relations Authority

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# Meetings

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*The Federal Service Labor-Management  
Relations Statute*

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- 5 U.S.C. § 7114(a)(2)(A) & (B) provide the union the opportunity to be represented at:
    - Formal Discussions
    - Investigative Examinations (*Weingarten* interviews)
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# FORMAL DISCUSSIONS

- Section 7114(a)(2)(A) provides: An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at:
    - any formal discussion
    - between one or more representatives of the agency and one or more employees in the unit or their representatives
    - concerning any grievance or any personnel policy or practices or other general condition of employment
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# Indicia of Formality – Totality of the Circumstances

- The level of supervisory or management officials conducting the meeting;
- Whether other supervisors or management officials attended;
- How long the meeting lasted;
- How the meeting was called;
- Where the meeting was held;
- Whether a formal agenda was established for the meeting;
- Whether attendance was mandatory;
- Were notes taken or a record made of the meeting;
- The subject matter addressed during the meeting; and
- The manner in which the meeting was conducted.

*F.E. Warren Air Force Base, Cheyenne, Wyo., 52 FLRA 149 (1996) ; Dep't of HHS, SSA, Bureau of Field Operations, S.F., Cal., 10 FLRA 115 (1982).*

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# SUBJECT MATTER

- Grievance;
  - Personnel policy or practice; or
  - General condition of employment
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# Discussions held to meet the subject

## matter test:

- **Grievance Meeting**

*U.S. DOJ, INS, N.Y. Office of Asylum, Rosedale, N.Y., 55 FLRA 1032 (1999)*

- **Meeting to discuss policies and procedures concerning annual leave**

*U.S. DOD, Def, Logist. Ag., Def. Depot Tracy, Tracy, Cal., 37 FLRA 952 (1990)*

- **Interview in preparation for an arbitration hearing or ULP hearing**

*Dep't of the Air Force, F. E. Warren Air Force Base, Cheyenne, Wyo., 31 FLRA 541 (1988).*

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# Discussions held NOT to meet the subject matter test:

- Counseling session with employee and supervisor  
*F. E. Warren Air Force Base, Cheyenne, Wyo.*, 52 FLRA 149 (1996).
  - Meeting to inform two employees of a temporary reassignment in duties  
*Bureau of Field Operations, SSA, S.F., Cal.*, 20 FLRA 80 (1985).
  - Discussion limited to manner in which four specific employees reported their productivity  
*U.S. GPO, Pub. Documents Distrib. Ctr., Pueblo, Colo.*, 17 FLRA 927 (1985).
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# Advance Notice

- A union is entitled to advance notice of a formal discussion so it can decide whether to attend and, if so, to designate a representative of its own choice to attend the meeting.
  - Exception:
    - Union has actual notice, *and*
    - Appropriate representative had opportunity to attend meeting.

*Dep't of the Air Force, Sacramento Air Logistics Ctr., McClellan Air Force Base, Cal.*, 29 FLRA 594 (1987); see also *GSA, Reg. 9, L.A., Cal.*, 56 FLRA 683 (2000).

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# Investigatory Examinations

*(Weingarten)*

- Section 7114(a)(2)(B) of the Statute entitles the union to be given the opportunity to be represented at:
  - an examination of an employee in connection with an investigation;
  - If the employee reasonably believes that disciplinary action may result against the employee; AND
  - If the employee requests representation.

*Fed. Bureau of Prisons, OIA, Wash., D.C. & Fed. Bureau of Prisons, OIA, Aurora, Colo. & Fed. Bureau of Prisons, OIA, Littleton, Colo., 54 FLRA 1502 (1998); NLRB v. Weingarten, Inc., 420 U.S. 251 (1975).*

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# “Examination”

- Where management’s meeting with the employee is designed to “ask questions, elicit additional information, have the employee admit his alleged wrongdoing, or explain his conduct.”

*Dep’t of the Treasury, Internal Revenue Service, 15 FLRA 360, 361, 370 (1984).*

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# Request for Representation

- The totality of the circumstances must be sufficient to put the agency on notice of the employee's desire for representation.

*U.S. DOJ, Fed. Bureau of Prisons, OIA, Wash., D.C., 55 FLRA 388 (1999).*

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# *A Weingarten* “Examination” Includes:

- Meeting to discuss inconsistencies in employee’s written and oral statements to management. *U.S. DOJ, Bur. Of Prisons, Metro. Correct. Ctr., N.Y., N.Y.*, 27 FLRA 874 (1987).
  - Requiring employees to prepare written memos designed to elicit information and have employees explain conduct. *U.S. INS, U.S. Border Patrol, Del Rio, Tex.*, 46 FLRA 363 (1992).
  - Interview of employee who was not subject of investigation but had reasonable basis to fear discipline. *IRS, Wash., D.C. & IRS, Hartford, Dist. Office*, 4 FLRA 237 (1980), *enforced, IRS v. FLRA*, 671 F.2d 560 (D.C. Cir. 1982).
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# *A Weingarten* “Examination” Does NOT Include:

- Meeting solely concerned with an employee’s performance evaluation
- Meeting called to counsel an employee
- Meeting limited to informing an employee of a decision already reached

*IRS, Detroit, Mich., 5 FLRA 421(1981).*

*Dep’t of Treasury, IRS, 15 FLRA 360 (1984).*

*U.S. Air Force, 2750 Air Base Wing Hdqtrs., Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 9 FLRA 871 (1982).*

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Once the elements of a *Weingarten* meeting are met, an agency must:

- Grant the request for representation
- Discontinue the interview; or
- Offer the employee the choice between continuing the interview unaccompanied by a union representative or having no interview at all.

*Norfolk Naval Shipyard, Portsmouth, Va.*, 35 FLRA 1069 (1990).

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# Limitations on the Union's Right to Designate a Representative:

- Agency may reject a particular representative where it can demonstrate “special circumstances,” such as to preserve the integrity of the investigation. *Fed. Bureau of Prisons, OIA, Wash., D.C. & Fed. Bureau of Prisons, OIA, Aurora, Colo. & Fed. Bureau of Prisons, OIA, Littleton, Colo.*, 54 FLRA 1502 (1998).
  - Agency need not postpone examination to allow an employee to be represented by a particular union official if another is available. *INS, N.Y. Dist. Office*, 46 FLRA 1210 (1993).
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