



TEXAS MILITARY DEPARTMENT  
POST OFFICE BOX 5218  
AUSTIN, TX 78763-5218  
(512) 782-5001

NGTX-JHR

14 November 2022

MEMORANDUM FOR All Bargaining Unit Employees, Texas National Guard

SUBJECT: Annual Notice of Right to Union Representation

1. The Civil Service Reform Act of 1978 gives employees represented by an exclusive labor organization the right to have a union representative present at a meeting which involves examination by a representative of the agency in connection with an investigation. Section 7114 (a) of the Act states, in part, that:

“(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at-

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if:

- (i) the employee reasonably believes that the examination may result in disciplinary action against the employee, and
- (ii) the employee requests representation.”

2. In compliance with section 7114 (a) (3) of the Act, you are hereby given the annual notice of the rights set forth above.

3. The point of contact for procedural assistance is Jeremiah Draper, Labor Relations Specialist, at (512) 782-5041, DSN 954-5041, NGTX-J1, P.O. Box 5218, Austin, Texas 78763-5218.

- 2 Encls
- 1. Rules at a Glance
  - 2. Unions Can/Unions Cannot

  
MEGAN TRUAX GRUBE  
Assistant Human Resource Officer  
TMD HRO

## **Enclosure 1**

### **The Rules at a Glance:**

Under the Supreme Court's Weingarten decision, when an investigatory interview occurs, the following rules apply:

#### **RULE 1:**

The employee must make a reasonable request for union representation before or during the interview. The employee cannot be punished for making this request.

#### **RULE 2:**

After the employee makes the request, the employer must choose from among three options. The Employer must either:

- Grant the request and delay questioning until the union representative arrives and has a chance to consult privately with the employee.
- Deny the request and end the interview immediately.
- Give the employee a choice of (1) having the interview without representation or (2) ending the interview.

#### **RULE 3:**

If the employer denies the request for union representation, and continues to ask questions, it commits an unfair labor practice and the employee has a right to refuse to answer. The employer may not discipline the employee for such a refusal.

**Enclosure 2**  
**Unions Can/Unions Cannot**

The following is a general list of the actions, which an exclusive representative may and may not take with respect to an investigation.

<b>UNIONS CAN:</b>	<b>UNIONS CANNOT:</b>
Designate its own representative to represent the employee at the exam, absent special circumstances.	Designate a representative whose participation as a representative will interfere with the employer's interest in achieving the objective of the investigation or compromise its integrity.
Ask management for a short delay so that a representative versed in the subject matter of the exam may attend to represent the union.	Unreasonably delay the exam because a particular representative is not able to attend at the scheduled time. Insist that more than one union representative attend.
Ask management what the investigation is about.	Demand that all questions to be discussed or documents to be referred to at the meeting be given first to the union representative before the meeting.
Briefly consult with the employee before the exam.	Delay the exam.
Raise relevant facts and issues related to the investigation.	Hide or confuse facts, mislead the investigators or delay or impede the investigation.
Clarify questions being asked to ensure the employee understands the question.	Answer the questions for the employee or repeatedly interrupt the questioning of the employee.
Represent the interests of the bargaining unit and assist the employee in raising all relevant facts and issues.	Raise issues that are not related to the investigation so as to disrupt, delay or impede the exam. Engage in an argument with the management officials conducting the meeting which interferes with the purpose of the exam.
Elicit favorable facts and extenuating circumstances.	Take charge of the meeting so as to disrupt, delay or impede the exam.
Consult with the employee during the examination.	Disrupt, impede or delay the exam; or answer questions for the employee.
Ask questions concerning the matter being discussed.	Act in a manner that: interferes with achieving the objective of the exam; damages the integrity of the investigation; or creates an adversarial contest.
Propose to negotiate, at the applicable time, over the manner in which the investigatory examination right will be implemented by the parties.	Insist that the investigatory examinations be conducted in a particular manner as decided by the union.