As many of you know there was an ongoing case in opposition to the tech unit winning the vote to join ONA on June 9. In the case, Asante alleges ONA had bribed voters to vote yes on their union with sheet cake from Costco. The National Labor Relations Board of Oregon (NLRB) dismissed the case of coercion by cake last month with this statement from the NLRB arbitrator.

"Admittedly, here, instead of mere promises of future benefits, the Union representatives offered employees a tangible current benefit, namely sheet cake. However, nowhere in the Employer’s 64 exceptions or brief does it point to the cake itself as objectionable. Nor am I aware of any case law finding the allure of even the most delicious or beautifully decorated cake sufficient to render otherwise unobjectionable conduct objectionable."

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sufficient to render otherwise unobjectionable conduct objectionable."

Asante is currently appealing the NLRB of Oregon’s decision through the national Labor Relations Board which is currently in process. This is their last appeal. However, this will not stop the ONA@RRMC - Techs from the process of working towards winning our first contract.

Your labor representative (Misha Hernandez) has submitted a demand to bargain to the administration and we are pushing for a response.

Asante will stall the process as long as possible since that is the only tactic left and some collective action may be necessary in the future.

You will hear murmurings and messaging from Asante about making cuts or changes because it is in such financial trouble. Or that Asante will have to make huge cuts because nurses asked for too much. This could not be farther from the truth.

ONA has seen Asante’s financials through the bargaining process. While we agree that Asante needed to make some huge cuts to their bloated administrative costs it is absolutely not the fault of the RNs being paid market value for their work. Last year Asante spent 22 million dollars on travelers alone.

By investing in core staff instead of throwing away millions on expensive contract RNs, this new wage will stabilize staffing and reduce the need for travelers. DO NOT accept Asante’s attempts to pit workers against each other while the top administrators continue to collectively make millions of dollars a year.
Bargaining Survey

In order to represent each department and member of your ONA-RRMC-Tech unit there is currently a bargaining survey. This survey will be instrumental in assessing the needs of the bargaining unit and help design the language in your contract.

**TAKE THE NEGOTIATION SURVEY HERE BY FRIDAY, DEC. 1, AT 11:59 P.M.**

https://www.surveymonkey.com/r/2023RRMCTechs-Pre-NegotiationSurvey
Negotiating Team Nomination

The next step in negotiating your first contract is nominating your negotiating team. In order to properly represent each unit there will be six negotiators with two alternate positions. To serve on the very first negotiations team will involve creating the first contract for your union and bargaining at the table with administration. Each negotiating team member will be advocating for the best for every unit in the bargaining unit. The team will negotiate rates of pay, differentials, workplace protections and more. The negotiating team will have training with the U of O’s Labor Education Resource Center along with the support of your labor representative and ONA’s legal counsel. As a negotiator the administration will have to let you out of your schedule to meet at the table and you will have full protection against retaliation of any kind.

Follow this link to nominate your negotiating team:

https://www.surveymonkey.com/r/2023-ONA-RRMC-TechNominations

Please submit your nominations by Friday, Dec. 1, at 11:59 p.m.

Elections will begin on Monday, Dec. 4.
What are the current ONA-Protections without a contract?

During this time before you have a contract you are covered under the basic rights of the NLRB and the established past practice. Past practice means that no major changes can be made without negotiating with the labor representative for ONA.

**Past Practice**: A past practice is any long standing, frequent practice that is accepted and known by both union and management. To be valid, a practice has to occur many times, the more times the better. It should also occur consistently. A practice that happened five times four years ago and hasn't happened again is not a very strong past practice. An exception to this might be a practice that occurs around a specific holiday. If every year for seven years management has allowed workers to go home after working only half the day on the day before Christmas without penalizing them, this could be a valid past practice.

Whatever the past practice is, there must be a clear and consistent pattern of it being repeated in the same way each time. If there are minor deviations, then there must be at least a predominant pattern of consistency.

**Example**: Management has always let workers accept personal phone calls. The union can document over 100 times in the last five years. Management says they can prove that on three occasions workers were refused the right to accept a personal phone call. In this case the clear and overwhelming pattern is in favor of the union. Three refusals over five years doesn’t break up the clear and consistent pattern.

Know your Weingarten Rights

**The right to request representation during an investigatory interview.**

Section 7 of the National Labor Relations Act (NLRA) protects employees’ right to “self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.”

Among the rights protected by Section 7 is the right of *union-represented employees*, upon request, to have their representative present during an interview that the employee reasonably believes could lead to discipline. This right was first articulated by the Supreme Court in the case, NLRB v. J. Weingarten, Inc. In that case, the Court found that Section 7 of the NLRA protects employees who refuse to submit to certain interviews without a requested representative present.

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Know your Weingarten Rights

An employee’s requested representative, which may be a union steward, business agent or officer, or fellow employee, is often referred to as a “Weingarten representative.” Weingarten representatives are entitled to provide advice and active assistance to employees during investigatory interviews. Employees’ right to request their representatives are frequently referred to as “Weingarten rights.”

Employers violate the NLRA if they proceed with an investigatory interview while refusing an employee’s request or retaliate against them for making the request. Depending on the circumstances of each case, the Board may order that the employer cease and desist, post a remedial notice, require the employer to repeat the interview with a union member present, or rescind and remedy discipline resulting from a Weingarten violation.

**When do employees have a right to request a union representative?**

An employee’s right to request a representative arises during an investigatory interview. A useful comparison is an individual’s Miranda right to an attorney when questioned by law enforcement. However, unlike the right to counsel in a Miranda setting, employers are not required to inform union members of their rights under Weingarten.

Any meeting may be an “investigatory interview” provided that the following occurs:

- A manager, representative of management, or supervisor is seeking to question an employee.
- The questioning is part of an investigation into the employee’s performance or work conduct. During an investigatory interview, a representative of management may require an employee to defend, explain, or admit misconduct or work performance issues that may form the basis for discipline or discharge.
- The employee reasonably believes that the investigation may result in discharge, discipline, demotion, or other adverse consequence to their job status or working conditions.
- The employee requests a union representative. Employers are not required to advise employees of their right to representation and third parties (including union representatives) may not make the request on behalf of the employee.

When making a request for a representative, the board does not require that the employee specify that they need a “Weingarten” representative. Once an employee requests their representative, they are not required to repeat that request.

At times, it is not clear whether a meeting is investigatory or could lead to discipline. In those cases, the National Labor Relations Board (NLRB) looks to the conduct of the

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meeting and the surrounding circumstances to determine if there was an investigatory purpose. The Board will consider such factors as the identity/status of the participants, the parties' collective-bargaining agreement and disciplinary practices, whether there was a confrontational tone to the meeting, any notices or warnings issued prior to the meeting, or whether employees had been disciplined for similar misconduct.

WHAT TYPES OF MEETINGS ARE NOT COVERED BY THE WEINGARTEN RULE?

If the above conditions are met, any meeting between an employer and employee could trigger an employee’s Weingarten rights. However, not every meeting or employer questioning satisfies those conditions. For example, employers need not grant an employee’s request for a representative in the following situations:

- Instructional meetings where an employee receives training or correction on work techniques. Meetings of this nature generally do not lead to discipline.

- Meetings in which an employer informs an employee (or employees) of personnel policies. Often these meetings do not require questioning of employees and do not lead to discipline.

- Meetings in which the employee is informed in advance that no discipline or adverse employment action will result from the interview.

- Meetings about disciplinary decisions that have already been made. If an employer has made a final decision on a disciplinary action, a meeting with an employee to inform them of that decision is not considered investigatory. In the same vein, if an employee initiates a meeting to discuss a disciplinary action that they have experienced, that meeting is not investigatory in nature because any discipline that the employee has experienced has already occurred.

- Meetings in which an employee is questioned as part of an investigation of another employee’s conduct or performance. For example, an employee who witnesses another employee’s misconduct is not entitled to Weingarten representation if they are questioned about what they observed.

Even in the above examples, however, the nature of a meeting may change as it progresses. If an employee reasonably believes that a meeting that

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commenced for some other purpose has become an investigatory interview, the board will look to the above factors to determine if an employee’s request for a representative should have been honored.

**Who may serve as an employee Weingarten representative?**
An employee may choose their own representative, who may be a representative of the union or a fellow employee. Employers are required to honor that request, so long as that choice does not unduly interfere with the employer’s ability to conduct its investigation. Employees may not request a non-employee representative unless that individual is an officer or business agent of the employee’s union. For example, an employee may not request a private attorney or a family member as their Weingarten representative if that individual has no affiliation with the employee’s union.

How should an employer respond to an employee’s request for representation?

When an employee requests a representative during an investigatory interview, an employer may lawfully take one of three courses of action:

1. The employer may grant the employee’s request and delay the interview until a representative is available.

2. The employer may deny the request and immediately end the interview, or

3. The employer may allow the employee to choose whether to proceed with the meeting without a representative or to end the interview.

If the employer denies the request and continues to ask questions, this could constitute an unfair labor practice. Also, it is an unfair labor practice for an employer to discipline an employee for refusing to answer questions without their union representative present.

**What may a union representative do during an employee interview?**

- Union representatives serve as advisors and witnesses during employee interviews. Employers are required to inform union representatives as to the subject matter of the interview and allow time for that representative to meet with the employee prior to questioning.

- During the interview, a union representative may ask the employer to clarify questions, give the employee advice on how to answer questions (within limits), and provide additional information to the employer after the questioning. A union representative may also object to questions if they are badgering, intimidating, or offensive.
Know your Weingarten Rights  

**WHAT ARE THE LIMITATIONS ON UNION REPRESENTATION DURING AN EMPLOYEE INTERVIEW?**

- When representing an employee during an investigatory interview, a union representative must remain civil and may not interfere with an employer’s legitimate efforts to conduct an investigation. An employer may lawfully remove a union representative from a meeting if they engage in disruptive or hostile behavior.

- A union representative may not tell an employee what to say and may not advise employees to give false answers.

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**WE HAVE OUR OWN WEBSITEPAGE!**

Visit this page to find newsletters and other links!

[https://www.oregonrn.org/arrmc-ahw](https://www.oregonrn.org/arrmc-ahw)
RN/ONA Wins

The RNs won a historic contract, that was tentatively agreed (TA’d) to in the wee hours of the morning on October 27.

On Monday, November 13 at 6 p.m. the bargaining unit of RNs voted to ratify the new agreement. Soon this will be the ONA @ RRMC Techs winning their first contract at Asante.

To view the new RN agreement, visit:  
www.oregonrn.org/arrmc