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NLRB Law Memo 06/16/2004

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- **NLRB - Epilepsy Foundation overruled; Non-unionized workers not entitled to representation at disciplinary interview.**

IBM Corp., 341 NLRB No. 148 (06/09/2004).

<http://www.lawmemo.com/emp/nlrb/341/148.htm>

The National Labor Relations Board has ruled by a 3-2 vote that employees who work in a nonunionized workplace are not entitled under Section 7 of the National Labor Relations Act to have a coworker accompany them to an interview with their employer, even if the affected employee reasonably believes that the interview might result in discipline. The Board issued the decision on June 9, 2004 and it was made public today.

The majority, Chairman Robert J. Battista, Member Peter C. Schaumber, and Member Ronald Meisburg overruled *Epilepsy Foundation of Northeast Ohio*, 331 NLRB 676 (2000), which had extended to unrepresented employees a right to have a coworker present during such interviews, and returned to pre-*Epilepsy* Board precedent holding that *Weingarten* rights apply only to unionized employees. Under *NLRB v J. Weingarten*, 420 U.S. 251 (1975), employees represented by a union have the right to have a representative accompany them to a disciplinary interview. Members Wilma B. Liebman and Dennis P. Walsh dissented. Member Schaumber agreed with the majority opinion and had a separate concurrence.

In this case, IBM, whose employees are not represented by a union, denied three employees' requests to have a coworker present during investigatory interviews about a former employee's allegations that they had engaged in harassment. An NLRB administrative law judge, applying *Epilepsy Foundation*, found that IBM violated Section 8(a)(1) of the Act by denying the employees' requests for the presence of a co-worker. Upon review, a Board majority reversed *Epilepsy* and therefore reversed the judge.

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