

Union of American Physicians and Dentists
UAPD, the largest post-graduate doctors' union in the United States, represents thousands of physicians, dentists, and podiatrists, including those in private practice and those employed by the State of California and many California counties.

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UAPD *news in brief*

COLUMBUS DAY GRIEVANCE HEADS TO ARBITRATION: More than 300 State-employed doctors signed on to a grievance aimed at restoring the Columbus Day holiday. Columbus Day was one of three holidays taken away by an act of the Legislature in 2009. UAPD and other unions argue that the State is obliged to negotiate over holidays, a topic covered in all State contracts. The grievance has progressed through all the steps of the grievance process; at every level, the DPA has been unwilling to restore the holiday or provide pay for the time lost in 2009. UAPD has continued to push the grievance to higher levels, and now has filed for arbitration on the matter. Third party binding arbitration, the final step in UAPD's grievance process with the state, puts the griev-

ance in the hand of a neutral, third party arbitrator agreed to by both parties. He or she is expected to make a decision based on the merits of the arguments, rather than on budgetary needs.

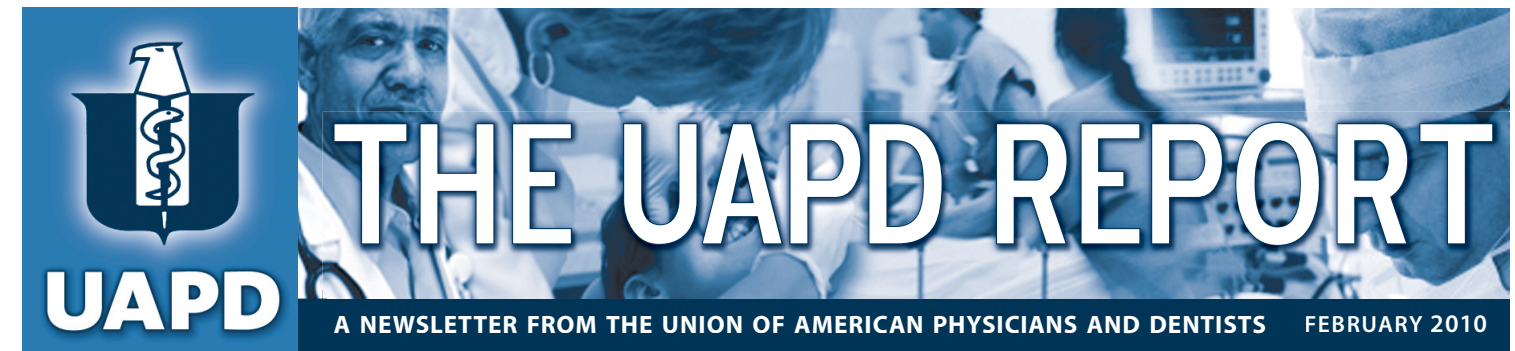
PUBLIC EMPLOYEE BILL OF RIGHTS: UAPD President Dr. Stuart Bussey and Legislative Director Doug Chiappetta have been busy generating support among union leaders and legislators for UAPD's latest project, a Public Employee Bill of Rights. Modeled on the Airline Passenger Bill of Rights, the UAPD bill seeks to provide basic, commonsense protections for those who work for the public good. UAPD hopes to have a sponsor in the Assembly before month's end.

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A NEWSLETTER FROM THE UNION OF AMERICAN PHYSICIANS AND DENTISTS FEBRUARY 2010



UAPD Wins Furlough Lawsuit

Superior Court rules in favor of UAPD, other unions, in challenges to Governor Schwarzenegger's failed cost-saving plan

On the final day of 2009, Alameda Superior Court Judge Frank Roesch issued rulings in favor of three public sector unions, including UAPD, which filed lawsuits against Governor Schwarzenegger's use of furloughs. Together with the ruling in favor of CCPOA guards issued days earlier, these union victories served as an important first step in turning the tide against furloughs.

In June of 2009 UAPD filed a lawsuit that challenged furloughs as beyond the Governor's authority and irrational with respect to agencies funded by federal funds or special funds, including licensing fees. In its original motion, UAPD listed the Department of Social Services (DSS), the Department of Public Health (DPH), the Department of Health Care Services (DHCS), and Medical Board of California as examples of agencies where a substantial portion of funding comes from federal or special funds.

Judge Roesch ruled that furloughs

which do not save the State money in its general fund served no legitimate governmental purpose, and held that the statutory authority to cut work hours claimed by the Governor required a consideration of each agency's own specific needs, rather than an across-the-board directive. In his ruling Judge Roesch ordered that Schwarzenegger "cease and desist the furlough of UAPD-represented employees." The court has yet to define which UAPD-represented employees the decision covers, but will likely limit its decision to those doctors working for agencies substantially funded by federal or special funds.

Schwarzenegger's representatives have expressed their intention to appeal the decision in favor of UAPD, and have already filed an appeal in the CCPOA case. That appeal put on hold State Controller John Chiang's plans to pay CCPOA officers their full salaries in the wake of Roesch's ruling. If and when UAPD's victory is appealed by the State, UAPD plans to file a motion to

declare Judge Roesch's order "immune from stay" so that doctors can be paid their full salaries, per the ruling, while the case is appealed. The motion will be based on the harm being suffered by furloughed doctors and the patients they serve, so UAPD must collect dec-

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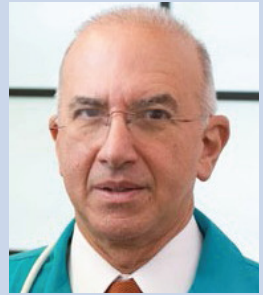
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UAPD

President's Message

Stuart Bussey, M.D., J.D.



Health Care Reform: Lessons From Haiti

Say what you want about slow or disjointed medical relief efforts in Haiti. Yes, there is chaos and immense human suffering. Hundreds have been saved and hundreds of thousands have not. But at least there are no insurance companies or attorneys making things worse.

Whether you work for a state or county employer or are under the thumb of an insurance payor, you have to acknowledge a certain degree of awe and envy of the providers on the ground in the Caribbean. There are no formularies to follow, no prior authorizations, no claims or utilization review, no attorneys, medical directors or hospital administrators looking over your shoulders in the makeshift ORs. Just doctors helping people. For those of us fortunate enough to have volunteered service in the Third World, a grateful smile is adequate reimbursement.

Governments around the world are now passionately responding with ingenuity and flexibility to this enormous health crisis, superimposed on an already impoverished nation. It is "health care reform" in the extreme. In contrast, our own health care reform proposal is staggering to an uncertain finish line. If any insurance reforms are passed, they will be few---pre-existing condition may be allowed, policy rescissions and lifetime caps disallowed. It would be just a start. Payors, however, will likely retain most of their administrative and bargaining power over doctors. Moreover, they may control greater numbers of patients if there is any individual mandate to buy their products.

It's a far cry from the hands-on health care delivery going on now in Haiti. Perhaps we should educate our insurance executives. Let's airlift them over to Port-au-Prince to do triage and assist with amputations.



Legislative Advocacy

All of UAPD's political contributions come from members' voluntary contributions to the UAPD Medical Defense Fund. Under federal law the UAPD cannot use the Medical Defense Fund to make political contribution to candidates for any federal office.

Instead, UAPD must rely on the lobbying clout of our national affiliate AFSCME (the American Federation of State, County, and Municipal Employees) to address federal issues. Many UAPD members donate to the AFSCME PEOPLE fund to support candidates who support the issues that are most important to working doctors. Most recently UAPD has worked through AFSCME to bring the doctor's perspective to federal health care reform.

On March 14 - 15, UAPD members will have an opportunity to serve as delegates to the AFSCME PEOPLE Conference in Sacramento. Discussions at this meeting will help decide the AFSCME political agenda for the coming year. Delegate nomination forms have been mailed to all members—those who are interested are encouraged to attend.



Legal Update

UAPD launched its latest member benefit, the Legal Defense Fund, on January 1. Any UAPD member, whether employed by the State, County, or working in private practice, who has received a formal written notice of suspension, termination, or limitation of medical staff privileges, can apply to receive up to \$500 per case and per year to pay for legal consultation. The fund will be used to pay for attorneys who have been approved by UAPD to provide this service. UAPD will continue its practice of offering non-lawyer representation at the initial stages of disciplinary proceedings.

To determine if they are eligible to receive funds under this policy, members must apply to a three person screening committee appointed by the UAPD President. The decisions of this committee shall be final. Other restrictions apply-- please contact the Oakland office at 510-839-0193 for details and to submit an application to the screening committee.

Benefits for Current and Future Employees, as well as Retirees, Come Under Attack

Gearing Up for the Next Pension Fight

Many UAPD retirees, including those who worked for the State of California, receive their retirement benefits from CalPERS. CalPERS is the largest, and many say most important, public pension fund in the United States. It manages health benefits for active and retired workers and provides retiree pensions from a massive defined contribution plan. As of 2009, it included 1,134,397 active members and 492,513 retirees.

CalPERS is now facing attacks on two fronts. In Sacramento, Governor Schwarzenegger's proposed budget would shift more of the cost of funding the CalPERS retirement plan onto State employees, who are already hurting from a year of furloughs and proposed salary cuts. Outside of the capital, three initiatives to cut CalPERS benefits have entered the signature gathering phase.

Schwarzenegger's proposed budget seeks a 5 percent increase in all employees' monthly pension contribution to CalPERS. In a speech about his budget, Schwarzenegger also suggests "working to find a way of changing the formula for new employees," presumably, to lower their retirement benefits and the amount invested by the State on their behalf.

In addition, three initiatives that

would cut pensions have entered the signature-gathering phase to qualify for the November ballot. The California Foundation for Fiscal Responsibility (CFFR) is sponsoring two alternative versions of an initiative that would cut retirement benefits by mandating a two tier system, with what one union calls "a cavernous gap between the tiers." Schwarzenegger has been in contact with the CFFR, though it is unclear whether he will back the initiative.

A third ballot measure seeks to cap public employee pension payouts at \$100,000 per year. CFFR president Marcia Fitz believes that she is exposing what she calls "pension abuse" by publishing the names of retirees in the "\$100,000 Pension Club." This arbitrary pension cap would seriously harm professionals who spend their careers in public service, often earning less than they would in the public sector.

While these attacks are aimed at the benefits of current and future employees, retired people already receiving their CalPERS retirement benefits also have a lot at stake. The security of the defined benefit plan—its ability to pay full retiree benefits even during a weak economy like this one—depends on a continuing influx of funds from active workers. Cutting future retirement benefits means cutting current contribution levels; having less money in the system puts it on shakier ground.

Moreover, making the CalPERS system less appealing for active workers, such as by increasing their out of pocket contribution, is part of long-term right-wing strategy to coax workers away from public defined benefit plans like CalPERS towards privately-run defined contribution plans (401Ks), which cost

If passed, the CFFR initiative would:

- Change the retirement formula for public safety employees from the current 2.5 percent at age 55 to 1.8 percent at age 60.
- Limit workers paying into Social Security to a defined pension based on no more than 1.25 percent of pay. Those who don't contribute to Social Security would get no more than 1.65 percent.
- Cap annual pension benefits at 75 percent of an employee's annual base wage.
- Require retirement benefits be based on a three-year average of base pay, excluding things like overtime, uniform pay, bonuses, longevity pay, accrued but unused vacation pay.
- Require that any public employee retirement enhancements go to a public vote.

employers less and enrich the vendors who provide them. Schwarzenegger attempted it in 2005; President Bush did the same when he tried to privatize social security. The problem for doctors is that the defined benefit plans fall far short of CalPERS in providing a secure retirement. For example, people who rely on defined contribution plans for their retirement income have been hard hit by the recent stock market decline.

Labor unions, including UAPD and AFSCME, have been instrumental in protecting CalPERS from these sorts of attacks in the past. It goes without saying that UAPD and other unions will be working hard to protect the benefits of current and retired members this time.



Clip & Save

Workplace Discipline

See reverse side for primer on your Weingarten Rights in the workplace.

If called into an investigatory meeting in the workplace, say:

"If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative, officer, or steward be present at this meeting."

Then contact your steward or call your nearest UAPD office and ask to speak with a Labor Representative. Make clear that you are facing discipline and need representation.

UAPD Oakland:
800-622-0909

UAPD Los Angeles:
800-504-8273

UAPD Sacramento:
800-585-6977

Your UAPD Union Steward

Name: _____

Phone: _____



San Mateo County Changes to Health Plan Lower Costs

UAPD and all other labor organizations representing San Mateo County workers agreed to changes in the health plan in order to contain costs.

Two changes will go into effect on April 1, 2010. The County will switch from Aetna HMO (health maintenance organization) plan and replace it with a similar Blue Shield HMO plan. The Aetna HMO provides nearly identical coverage at a lower cost to the County and to employees. Also the County will modify the eligibility rule for medical coverage for coverage dependents so that coverage ends at age 24.

In order to facilitate the change from Aetna HMO to Blue Shield HMO, the County will hold a special open enrollment period for those employees currently enrolled in the Aetna medical plan. Affected employees will be given the opportunity to change to the new Blue Shield HMO plan, the Kaiser HMO plan or the existing Blue Shield Point of Service (POS) plan. These employees will be sent an open enrollment change form with instructions to make their election.

For those employees affected by the change in medical coverage for dependents, the Benefits Department will also be contacting them to provide information about COBRA coverage and suggestions for securing medical coverage for their dependents.

San Mateo doctors can contact their benefits office or UAPD Labor Representative Patricia Hernandez with questions about these policy changes.



County Doctors

Gardner Health Back to the Table

UAPD members at Gardner Health Center made the bold move of rescinding their contract ratification vote, after their employer surprised them with news that the health care costs borne by employees would increase substantially. Gardner management had made no indication during negotiations that health care costs would rise. The UAPD Bargaining Team at Gardner will head back to the table to renegotiate the economic portions of the contract taking into account the new out of pocket expenses.

Alameda County Not to the Table

Alameda County asked UAPD to re-open its contract and give up wage increases for the next two years. Though recognizing the County's budgetary concerns, the doctors declined, because Alameda County has a significant problem with recruitment and retention of doctors which would be exacerbated by not keeping pace with wages of surrounding counties. UAPD continues to look at other cost saving measures, including participation in the Health Care Labor/Management Workgroup.

Sacramento Bee Investigates CDCR Medical Contractors

UAPD provided background information for an article by Sacramento Bee writer Charles Piller, who produced a series of stories in December on the misuse of medical contractors in state prisons. Piller uncovered facts like this one:

"From July 2008 to May this year, the state spent \$152 million on registry clinicians, including a top rate of \$527 per hour for a doctor at San Quentin State Prison. If state employees had done the work, \$22 million could have been saved in a year of dire budget cuts, layoffs and furloughs. That \$152 million total does not include payments to temporary psychiatrists, dentists and other registry staff..."

Response to the article was swift. Within one day, two legislators vowed to investigate health care staffing within CDCR. "Any waste or inefficiency is a serious problem for the state," said Senator Mark Leno (D-San Francisco), who may hold a hearing of the Senate Public Safety Committee, which he chairs. Senator Leno, who was a featured speaker at UAPD's Triennial Convention in October, has a long history of progressive reform. In addition, Assembly Member Hector De La Torre (D-Los Angeles County) said he would either hold a hearing to examine prison health care staffing or develop recommendations for the receiver. Assembly Member De La Torre chairs the Accountability and Administrative Review Committee, which is charged with identifying savings in



Senator Mark Leno (D-San Francisco) is investigating CDCR contractors.

the management of state government and reviewing the effectiveness of state agencies.

UAPD leaders are looking forward to giving their input on the issue of contracting to these and other legislators. In addition to costing much more than civil service doctors, independent contractors on average provide lower quality patient care, make more errors, and lower morale among regular staff. To recruit and retain high quality medical staff, the State must provide compensation and a working environment that is comparable to what a doctor can find working outside of civil service. While steps have been taken in that direction, the large number of doctor vacancies in all State departments--not just CDCR--suggest there is much more work to do.

The High Cost of Contractors

Top Salary for CDCR Contract Physician
\$504,203

Top Hourly Cost for CDCR Contract Physician
\$526.57



Membership Makes the Union Strong

You know the benefits of belonging to a union. By filling out an application to join UAPD, you made yourself eligible for a range of benefits: free CME classes, union print and electronic publications, the Legal Defense fund, and more. You also gain the right to help decide the direction of your union--only full members can vote in union elections and contract ratifications, attend UAPD and AFSCME meetings, fill out bargaining surveys, and otherwise guide the course of UAPD.

However, in every unit, both on the State and County levels, there are people who have not signed the application to become UAPD members. A small number are opposed to unions on a philosophical level. But most are simply unaware that being a member requires signing an application. This is especially true of new hires.

Because maximizing the strength of our union requires maximizing the number of full members, we are asking doctors to help UAPD sign up their colleagues as union members. If you are willing to help with this project in your workplace, please contact Sue Wilson at swilson@uapd.com.

The Need to Eliminate the Antitrust Exemption for Health Insurers

Unlocking Competition

This article was created by the Center for American Progress (www.americanprogress.org). By David Balto, Stephanie Gross. Published October 28, 2009

Competition is the lodestar of the marketplace. Where competition thrives, consumers benefit from numerous choices, low prices, superior service, and innovation....

Yet the health insurance industry is one of only two industries that are exempt from federal antitrust laws (baseball is the other). The McCarran-Ferguson Act, passed in 1945, effectively grants all insurers an exemption from federal antitrust or consumer protection enforcement [and places regulation in the hands of individual states]...

A lack of federal oversight and the insurers' successful battle against regulation has given insurers great latitude to invent deceptive and fraudulent schemes to harm consumers. Insurers engage in a veritable laundry list of misleading and abusive conduct such as egregious preapproval provisions, deception about scope of coverage, unjustifiably denying or reducing payments to patients and physicians, and other coercive conduct.

Some opponents of reform argue that it is appropriate to leave health insurance regulation to the states, and that state insurance commissioners can effectively police health insurers' antitrust and consumer protection violations. This could not be farther from the truth. The state insurance commissioners have never brought any actions against anticompetitive conduct, and they have brought relatively few consumer protection actions...

A recent Center for American Progress survey of actions by state insurance commissioners found only extremely limited and sporadic enforcement by state insurance commissioners. There were no antitrust actions brought by state insurance commissioners. And a third of the states brought no significant consumer protection actions. Over 10 percent of the remaining states only participated in multi-state actions.

Those states that need an active insurance regulator the most—ones dominated by a single insurer—rarely bring enforcement actions. In six of the seven most concentrated markets for health insurance—Rhode Island, Alabama, Maine, Alaska, Hawaii, and Montana—the state Department of Insurance has taken no significant consumer protection actions against health insurers in the past five years.

State insurance laws are not an adequate substitute for federal antitrust and consumer protection laws. State actions are laudable, but state enforcement is episodic and can only repair a problem involving a single company in a single state. And employer-sponsored health plans account for over 40 percent of the private health insurance market but are not subject to state regulation at all. As Chairman Conyers recently put it, "Although state regulation of this industry is crucial and is preserved in this bill, it has proved insufficient to prevent these particularly abusive practices."

Trying to fix these endemic problems in the health insurance market with sporadic state enforcement is like treating cancer with a bushel of Band-Aids. That is why it is necessary to eliminate the McCarran-Ferguson antitrust exemption....

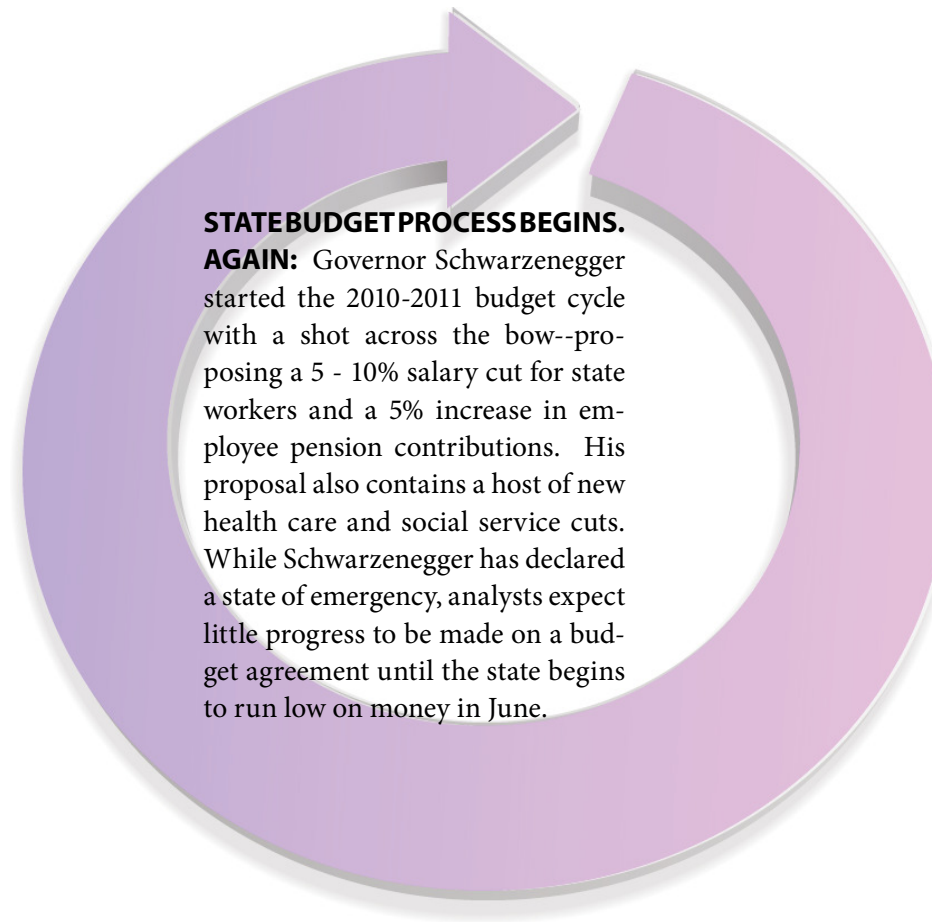
Full article available at www.americanprogress.org



Mailer Sent to 50,000 Private Practice Docs

UAPD was founded by a private practice doctor, Sanford A. Marcus, and for many years most of its members worked in private practice. Over the years, successful organizing dramatically increased the size of the State and County sectors, to the point that most current UAPD members are employed. But the commitment to serving private practice doctors remains, as does an interest in expanding the number of people in this part of the union.

To that end, in January UAPD sent a letter and brochure to 50,000 California physicians, inviting them to consider union membership. While the mailing listed many of the free member services that UAPD provides, including free CME classes, contract review, and fee recovery assistance, the focus of the mailing was the need for doctors to work together to reform anti-trust law, especially because the insurance industry, with its own anti-trust exemptions, shows no signs of loosening its grip on healthcare. If you know a doctor in private practice, encourage him or her to return the membership application.



STATE BUDGET PROCESS BEGINS. AGAIN: Governor Schwarzenegger started the 2010-2011 budget cycle with a shot across the bow--proposing a 5 - 10% salary cut for state workers and a 5% increase in employee pension contributions. His proposal also contains a host of new health care and social service cuts. While Schwarzenegger has declared a state of emergency, analysts expect little progress to be made on a budget agreement until the state begins to run low on money in June.

UAPD Victory in Furlough Suit

Continued from p. 1

larations from DSS, DPH, DHCS, and Medical Board doctors giving specific examples. Doctors with such examples should contact UAPD immediately.

The Court's decision in the UAPD case did not deal with departments who rely primarily on the State's general fund for money. Nor did it address the important issue of backpay for time lost to furloughs. The UAPD legal team is actively developing legal strategies to address these issues. Judge Roesch's ruling in favor of of CCPOA officers working in 24/7 CDCR facilities does not automatically extend to UAPD's CDCR or 24/7 workers. UAPD lawyers are still considering whether there is a way to apply the logic of the decision regarding corrections officers to UAPD doctors, despite significant differences between the two groups. UAPD also has two PERB charges pending against

the furloughing of doctors in all state agencies.

Though it covers only a portion of our members, this legal victory is a first step towards ending furloughs once and for all. It is not coincidental that Schwarzenegger's January budget proposal, inadequate as it may be, proposes ending furloughs. The policy cannot withstand legal scrutiny, nor can the State afford to fight these cases; the Sacramento Bee reports that the DPA has already spent more than \$500,000 from the general fund on litigating furlough cases. Members can rest assured that UAPD leadership and our legal team are aggressively pursuing every legal avenue in the fight against furloughs and cuts of all kinds. While we can take a moment to enjoy our first victory, the battle continues.

Weingarten: Facts to Know

From *The Legal Rights of Union Stewards* by Robert M. Schwartz, J.D.

Weingarten rights apply only during investigatory interviews. An investigatory interview occurs when: (1) management questions an employee to obtain information; and (2) the employee has a reasonable belief that discipline or other adverse consequences may result.

The employee can request union representation before or at any time during the investigatory interview.

Example: "If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative, officer, or steward be present at this meeting."

When an employee asks for representation, the employer has three options: (1) Grant the request and delay questioning until the union representative arrives; (2) Deny the request and end the interview immediately; or (3) Give the employee a choice of: (a) having the interview without representation or (b) ending the interview.

If the employer denies the request for union representation and continues the meeting, the employee can refuse to answer questions.

Employers sometimes assert that the only function of a steward at an investigatory interview is to observe the discussion. This is incorrect. The steward must be allowed to advise and assist the employee in presenting the facts.

An employer **does not** have to inform an employee that he or she has a right to union representation.