

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF STATE EMPLOYEES,	)	
	)	
Complainant,	)	CASE 21101-U-07-5386
	)	
vs.	)	DECISION 9929 - PSRA
	)	
UNIVERSITY OF WASHINGTON,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER
_____	)	

Younglove, Lyman & Coker, by *Edward Earl Younglove*,  
Attorney at Law, for the union.

Robert McKenna, Attorney General, by *Robert W. Kosin*,  
Assistant Attorney General, for the employer.

On August 2, 2007, the Washington Federation of State Employees (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission alleging that the University of Washington (employer) had engaged in unlawful interference in violation of RCW 41.80.110(1)(a) when it denied union representation to an employee during an investigatory interview (Weingarten rights). A preliminary ruling found that the complaint stated a cause of action and a hearing was held on September 20, 2007, before Hearing Examiner Robin A. Romeo. The parties filed post-hearing briefs.

ISSUE PRESENTED

Did the employer interfere with Marty Luschen's right to union representation when he was interviewed on May 9, 2007, without a union representative present.

Based upon the evidence and testimony presented and the record as a whole, I find that the employer did not unlawfully interfere with the employee's representation rights.

APPLICABLE LEGAL STANDARD

RCW 41.80.110(1)(a) guarantees the right of public employees to be free from interference in the exercise of their collective bargaining rights. This includes the right to union representation at investigatory interviews where the employee reasonably believes that the interview might result in disciplinary action, also known as Weingarten rights. *University of Washington*, Decision 8794 (PSRA, 2004). An investigatory interview is one where the employer seeks information from an employee and the purpose of allowing a union representative to be present is to protect an employee who may be unfamiliar with or intimidated by the situation. *NLRB v. Weingarten*, 420 U.S. 251 (1975). To establish that Weingarten rights should have been observed, the complainant must establish that:

1. the employee was compelled to attend the interview,
2. the purpose of the interview was or became investigatory,
3. the employee reasonably believed that discipline might result from the interview, and
4. the employee requested the presence of a union representative and the employer went ahead with the interview without the representative.

*Cowlitz County*, Decision 6832-A (PECB, 2000).

The right to representation belongs to the individual employee, not the union and the union does not have the right to attend an investigatory interview unless it has been invited by the employee. *Methow Valley School District*, Decision 8400 (PECB, 2004). When the union has been requested, the employer must follow the request and may not steer the employee away from the right to representation by telling the employee that representation is not needed. *Lewis Public Transit Benefit Area*, Decision 9275 (PECB, 2006). In determining whether the employee's belief that discipline may result is reasonable, objective factors will be used. *Mason County*, Decision 7048 (PECB, 2000).

#### ANALYSIS

The union argues that the employer violated the representational rights of Marty Luschen, a Security Officer at Harborview Medical Center when he was questioned during a meeting on May 9, 2007. The employer counters that Luschen never requested union representation, and that even if he did, he withdrew the request before the meeting, that the meeting did not lead to discipline and that Luschen did not have a reasonable belief that the meeting would lead to discipline.

#### The Requirement to Attend the Interview - Standard 1

On May 9, 2007, Luschen was assigned to work in the Emergency Room at Harborview Medical Center. During his shift, a nurse requested that Luschen physically evict an uncooperative patient from the premises. Luschen stated that pursuant to policy, he was not allowed to evict patients. Luschen then summoned a state trooper who was successful in removing the patient from the premises.

The nurse complained to her supervisor that she did not feel safe in the emergency room if security officers could not evict patients. As a result of consultations between various levels of management, Luschen was given a "coaching" session by his immediate supervisor. Later, Luschen was summoned by his immediate supervisor to attend a meeting in the office of Robert Lewis, Acting Associate Director, which he did. Following the meeting, he was transferred to another work location.

The question is whether Luschen was required to attend the meeting in Lewis' office. I find that he was. Luschen was told by his supervisor to attend a meeting with "higher ups." There was no evidence that the meeting was voluntary or that Luschen could choose not to attend the meeting. The employer has not argued that the meeting was not compulsory.

Whether the Interview Was Investigatory - Standard 2

Lewis testified that the purpose of the meeting was to discuss Luschen's interpretation of the policy on ejecting difficult patients and to see if Luschen understood his job duties.

In *Okanagon County*, Decision 2252-A, (PECB, 1986), the Commission examined whether an interview was investigatory where an employee was questioned about certain incidents. The Commission noted that the interview does not have to be adversarial to be investigatory and that a union representative's presence may assist the employer in obtaining favorable facts and help both sides save time in getting to the bottom of the issue.

As in *Okanagon County*, I conclude that the questions asked of Luschen were investigatory as they relate to his competence. An understanding of one's job duties is directly related to job

performance and is determinative of an employee's competence. If Luschen did not understand his job duties, the questions pertaining to them could lead to disciplinary measures.

Did Luschen Reasonably Believe That Discipline Could Result - Standard 3

Luschen testified that when he arrived at the meeting and saw who was present, he became worried that he was going to be reprimanded. Robert Bonilla, an Acting Associate Director, corroborated that Luschen was worried. Present at the meeting were Lewis, Bonilla, Galves, Sergeant Jacobsen, Sergeant Berry and intermittently, Acting Chief O'Bryan.

An employee's reasonable belief that discipline may result is measured by objective factors. In *Mason County*, Decision 7048, the factors that were examined were the type of meeting that was to occur, the subject discussed, and who attended the meeting. There, the employee did not have a reasonable belief that discipline would result. She was concerned that a meeting was to question her about a job assignment when in fact, the meeting was merely a regularly scheduled meeting with her supervisor and the timing was not connected to the job assignment.

Using the factors in *Mason County*, I find that while Luschen initially did not believe that the meeting was disciplinary in nature, once he arrived, he reasonably believed that it was even though he may have been confused as to exactly what the meeting was about. He was involved in an incident earlier that day where another employee had accused him of not doing his job, he had then been coached by his supervisor about his job duties and then he walked into a meeting to discuss the incident where numerous supervisors were present. Using these objective standards, it was

reasonable for him to believe that such a meeting could be disciplinary.

Whether a Union Representative Was Requested and the Meeting Occured Anyway - Standard 4

Initially, Luschen told his immediate supervisor en route to the meeting that he wanted his shop steward present. Galves replied that he didn't need him. Galves testified that he told Luschen that he could stop the meeting anytime if he felt that he needed Miller present.

Luschen testified that en route to the meeting, he had a conversation with his shop steward, Tyler Miller. He told Miller that he did not believe that the meeting was disciplinary and that he was going to participate in it without Miller being present.

There is no evidence that upon arriving at the meeting, Luschen reiterated his request to have a union representative present. He did not stop the meeting at any time during the meeting to ask for his union representative. The only person who knew that he had initially asked for a representative was Galves, who was not in charge of the meeting.

In *Lewis Public Transportation Benefit Area*, Decision 9275, an employee was given a copy of a customer complaint and told to attend a meeting with her supervisor. When she asked the supervisor for her union representative to be present, she was told that she did not need one and that the meeting would not result in discipline as she had no independent authority to impose discipline. Since the supervisor was in fact misleading the employee and was disguising the true intent of the meeting, she was found to be steering the employee away from invoking her Weingarten rights and effectively denying her those rights.

Unlike the facts in *Lewis Public Transportation Benefit Area*, Galves' statement to Luschen that he did not need a representative did not act to steer Luschen away from exercising his rights. Luschen demonstrated that he had the ability to think for himself and decide whether he wanted representation. His decision making ability is evidenced by his earlier refusal to evict a patient when he did not believe he was authorized to do so. He was not "talked out of" asking for representation in a misleading and disguised manner even though he was not following his union representative's advice. He clearly communicated to Miller that he would attend the meeting without him.

The fact that Miller called Bonilla and asked that the meeting not occur without him is irrelevant. Weingarten rights attach to the individual, not the union. *Methow Valley School District*, Decision 8400. The failure to respond to Miller's request is inconsequential.

#### CONCLUSION

Luschen was compelled to attend a meeting that was investigatory and that he reasonably believed was disciplinary. However, he failed to request union representation. The employer did not violate his Weingarten rights.

#### FINDINGS OF FACT

1. The University of Washington is a public employer as defined by RCW 41.80.005(1).
2. The Washington Federation of State Employees is a bargaining representative within the meaning of RCW 41.80.005(9) repre-

senting a unit of employees including security officers at the University Of Washington.

3. Marty Luschen is a Security Officer employed by the University of Washington.
4. On May 9, 2007, Luschen was involved in a situation where he was asked by a nurse to evict a patient from the premises. He did not evict the patient.
5. On May 9, 2007, Luschen was asked by his immediate supervisor to attend a meeting with him, another Sergeant, two Lieutenants and the Acting Director to discuss the incident.
6. Prior to the meeting, Luschen requested that his shop steward be present but then informed his shop steward that he did not believe the meeting was disciplinary and he was going to the meeting without him.
7. Upon arriving at the meeting, Luschen then believed it may be disciplinary in nature - but he did not ask for union representation during the meeting.
8. During the meeting, Luschen was questioned about his understanding of his job duties. Following the meeting, he was transferred.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and Chapter 391-45 WAC.



2. The employer did not violate Luschen's Weingarten rights under Chapter 41.80.110(1)(a) on May 9, 2007, when it interviewed him without a union representative present.

ORDER

The petition is hereby DISMISSED, in its entirety.

ISSUED at Olympia, Washington, this 12<sup>th</sup> day of December, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in black ink, appearing to read "Romeo", is written over the printed name of the examiner.

ROBIN A. ROMEO, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.