STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PROFESSIONAL FIREFIGHTERS OF MERCER ISLAND, LOCAL 1762, IAFF,

CASE NO. 3731-U-81-568

Complainant,

DECISION NO. 1460-A PECB

vs.

CITY OF MERCER ISLAND,

DECISION OF COMMISSION

Respondent.

<u>Craig Hagstrom</u>, Vice-President of IAFF Local 1762, submitted the Petition for Review.

Ronald Dickinson, Attorney at Law, appeared on behalf of the respondent.

The issue presented in this case is whether an employee's utilization of a grievance procedure created by the employer independent of the collective bargaining agreement and applicable civil service rules entitles that employee to the presence of a union representative during those proceedings. The examiner found that the right to union representation did not exist in this case, and the union has petitioned for review.

Pertinent factual details regarding this case are set out in the examiner's decision, and will not be repeated here. As noted by the examiner, NLRB v. Weingarten, Inc., 420 U.S. 252 (1974) held that an unfair labor practice is committed under the National Labor Relations Act, due to a violation of an employee's right under Section 7 of that Act to engage in concerted activity for mutual aid and protection, when an employer denies an employee's request to have a union representative present in an investigatory interview or proceeding where the employee reasonably believes disciplinary action may result. More recently, the National Labor Relations Board held in Material Research Corp., 262 NLRB No. 122 (July 20, 1982) that the same principles apply in a non-union establishment, entitling an employee to have a co-worker present at an investigatory interview which might result in discipline. While the latter might suggest that the Weingarten principles might be applied to a procedure unrelated to a collective bargaining agreement, such as is at issue in this case, we need not reach the question of whether the legal principles referred to are available under RCW 41.56. $^{\perp\prime}$ We concur with the examiner's conclusions that the principles enunciated in Weingarten are inapplicable on the facts of this case.

^{1/} Consider: City of Seattle, Decision 489, 489-A (PECB, 1978). Since this question has not been raised or briefed by any of the parties, we will decline to specifically rule whether the right to union representation could exist, saving that question for a later case.

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NLRB v. Weingarten, supra, affirmed the NLRB's condition that the attendance at the meeting or proceeding by the employee in question must be involuntary. In other words, if the interview or proceeding is compulsory (i.e., nonattendance could subject the employee to even further discipline) then the rule applies. As stated in Material Resarch Corp., supra, although a union observer may be requested, the employer does not need to hold an interview. In that case, the employee would then have the choice of either attending the interview unaccompanied, or having no interview take place, foregoing any benefits that may result from that proceeding. The union argues that the employee in this case effectively had no choice but to utilize the grievance procedure in question, because no other procedure was available to him. agree that the employee's options were limited; nevertheless, the decisions cited herein strongly indicate that it makes no difference that the only other available option to the employee is to forego the proceeding and benefits that could be derived from it. In the case at hand, it was clearly the employee, and not the employer, who wanted the procedure to take place. Hence, the employee was free to insist that no union representative be present, if the procedure were to be utilized. An additional reason for denying the union's claim may be that it is doubtful the procedure in this case was "investigatory". It is questionable whether the employee reasonably believed that an appeal-type of procedure from a prior disciplinary action could result in even harsher punishment.

The findings of fact, conclusion of law and order of the hearing examiner are hereby affirmed.

Issued at Olympia, Washington, this 27th day of October, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JANE R. WILKINSON, Chairman

ROBERT J. WILLIAMS, Commissioner

MARK C. ENDRESEN, Commissioner