

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., non-attendance could subject the employee to even further discipline) then the rule applies. As stated in Material Research 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. We 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