

State – Liquor Control Board, Decision 12365 (PSRA, 2015)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON PUBLIC EMPLOYEES
ASSOCIATION,

Complainant,

vs.

STATE – LIQUOR CONTROL BOARD,

Respondent.

CASE 27189-U-15

DECISION 12365 - PSRA

ORDER OF DISMISSAL

On May 1, 2015, the Washington Public Employees Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC naming State – Liquor Control Board (employer) as respondent. The complaint was reviewed under WAC 391-45-110,¹ and a deficiency notice issued on May 15, 2015, indicated that it was not possible to conclude that a cause of action existed at that time. The union was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the case.

No further information has been filed by the union. The Unfair Labor Practice Manager dismisses the complaint for failure to state a cause of action.

DISCUSSION

The allegations of the complaint concern employer interference with employee rights in violation of RCW 41.80.110(1)(a) on December 1, 2014, by interfering with Rebecca Contreras's right to

¹ At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

union representation during a meeting about her evaluation, in violation of Article 38.1 of the collective bargaining agreement (CBA).

The complaint does not state a cause of action under Chapter 41.80 RCW.

Weingarten Rights Only Apply to Investigatory Interviews

In *NLRB v. Weingarten*, 420 U.S. 251 (1975) (*Weingarten*), the Supreme Court of the United States affirmed a National Labor Relations Board (NLRB) decision holding that under the National Labor Relations Act (NLRA), employees have the right to be accompanied and assisted by their union representatives at investigatory meetings that the employee reasonably believes may result in disciplinary action. *Seattle School District*, Decision 10732-A (PECB, 2012). In *Okanogan County*, Decision 2252-A (PECB, 1986), the Commission held that the rights announced in *Weingarten* are applicable to employees who exercise collective bargaining rights under Chapter 41.56 RCW. See also *Methow Valley School District*, Decision 8400-A (PECB, 2004).

An employee has a right to union representation at an “investigatory” interview which the employee reasonably believes could result in discipline. *City of Bellevue*, Decision 4324-A (PECB, 1994), citing *NLRB v. Weingarten*, 420 U.S. 251 (1975); *Okanogan County*, Decision 2252-A. It is the nature of an “investigatory” interview that the employer is seeking information from the employee. A union representative is present to assist the employee at an investigatory interview, not to speak in place of that individual. *City of Bellevue*, Decision 4324-A. Discipline often can and does result from “investigatory” meetings, and the Commission has found interviews to be “investigatory” where they were part of an investigation concerning improper conduct. *Snohomish County*, Decision 4995-B (PECB, 1996). If the interview is not investigatory in nature, *Weingarten* rights do not apply.

Employer’s Meeting With Contreras was Not Investigatory

The complaint alleges that Contreras had a meeting with the employer regarding her evaluation. There are no facts alleged to indicate that the December 1, 2014, meeting about Contreras’s evaluation was investigatory in nature or that Contreras had a reasonable belief that questions

being asked at the meeting could result in discipline. Because the meeting is not alleged to have been investigatory, *Weingarten* rights would not apply. The complaint does not state a cause of action for interference with Contreras's *Weingarten* rights.

Alleged Violation of Article 38.1 of the CBA

The complaint alleges that union representatives attended the December 1, 2014, meeting about Contreras's evaluation based on rights outlined in Article 38.1 of the parties' CBA. Article 38.1 states in part, "Upon request, employees will have the right to representation at all levels on any matter adversely affecting their conditions of employment."

Contract Violations are Not Enforceable through Unfair Labor Practice Provisions

The Commission has consistently refused to resolve "violation of contract" allegations or attempts to enforce a provision of a collective bargaining agreement through the unfair labor practice provisions it administers. *Anacortes School District*, Decision 2464-A (EDUC, 1986), citing *City of Walla Walla*, Decision 104 (PECB, 1976). The Commission has consistently held that any remedy for a contract violation will have to come through the grievance and arbitration machinery of that contract, or through the superior courts. *South Whidbey School District*, Decision 11134-A (EDUC, 2011), *Bremerton School District*, Decision 5722-A (EDUC, 1997).

CONCLUSION

The complaint does not state a cause of action for interference with Contreras's *Weingarten* rights. *Weingarten* rights apply to investigatory meetings that the employee reasonably believes may result in disciplinary action. The meeting Contreras had with the employer regarding her evaluation is not alleged to have been investigatory. *Weingarten* rights do not apply in this case.

The complaint also alleges that the employer interfered with an employee's right to have union representation allowed by Article 38.1 of the CBA. The Commission does not have jurisdiction over enforcement of individual provisions of the parties' CBA. The union can use the contractual grievance procedure to enforce employee rights under Article 38.1 of the CBA.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices in the above captioned matter is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 1st day July, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "J. Bradley", is written over the printed name.

JESSICA J. BRADLEY, Unfair Labor Practice Manager

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.



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PUBLIC EMPLOYMENT RELATIONS
COMMISSION



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CASE NUMBER: 27189-U-15-06936 FILED: 05/01/2015 FILED BY: PARTY 2
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