

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION,
LOCAL 1765,

Complainant,

vs.

GRAYS HARBOR TRANSPORTATION
AUTHORITY,

Respondent.

CASE 132777-U-20

DECISION 13376 - PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Edward Earl Younglove III, Attorney at Law, Younglove & Coker, P.L.L.C., for
the Amalgamated Transit Union, Local 1765.

John Lee, Attorney at Law, Summit Law Group PLLC, for Grays Harbor Transit
Authority.

On April 21, 2020, the Amalgamated Transit Union, Local 1765 (union) filed an unfair labor practice (ULP) complaint against Grays Harbor Transportation Authority (employer). The union asserted that the employer interfered with employee rights by denying an employee's request for union representation during an investigatory interview. A Public Employment Relations Commission (PERC) Unfair Labor Practice Administrator issued a preliminary ruling on April 27, 2020, stating that a cause of action existed. The undersigned held a hearing conducted by videoconference on February 26, 2021, and the parties submitted post-hearing briefs by April 26, 2021, to complete the record.

ISSUE

Did the employer interfere with employee rights in violation of RCW 41.56.140(1) by denying Mark Linthicum's request for union representation during an investigatory interview that Linthicum reasonably believed could result in discipline?

The interference allegation is dismissed. The union failed to establish by a preponderance of credible evidence that the meeting in question was investigatory in nature.

BACKGROUND

Mark Linthicum is currently employed as a “B Board Operator” by the employer, a role in which Linthicum acts as a substitute bus driver. Since beginning work for the employer on August 24, 2016, Linthicum has held other positions with the employer. Linthicum is a member of the union and has never held any leadership positions within the union.

On March 12, 2020, the employer conducted a meeting with Linthicum, which gave rise to the instant complaint. On this date, Operations Manager Diane Lutts approached Linthicum in the break room and asked that Linthicum return with Lutts to her office. Lutts shares a small office with Operations Manager Terri Gardner, who was in the office at the time. Katie Heikkila, the employer’s new Human Resources specialist, was also in the office. The office door was closed during the meeting.

Based on previous experience with the employer’s investigation and disciplinary process and his observation of the three members of management at the meeting, at the beginning of the meeting Linthicum believed he was in trouble. Linthicum asked if he needed a union representative at the meeting. He was informed that he did not need union representation as there would be no discipline resulting from the meeting. Lutts then began to describe four customer complaints that the employer had received recently about Linthicum’s time as a driver.

The hearing testimony of the four witnesses at the meeting revealed conflicting memories of the event, which occurred almost one year prior. For example, Linthicum remembers that the meeting began before Heikkila entered the room; however, Lutts, Gardner, and Heikkila remember Heikkila being in the office at the start of the meeting. Linthicum testified that he was asked questions about the complaints; however, he expressed uncertainty about these questions because of how long ago the meeting was held. For example:

Younglove: Do you remember -- do you remember any of the questions they asked? Did they ask you why you did that or --

Linthicum: Yeah, I -- yeah, I think so. And I'm -- I don't remember why I -- it was some time -- I don't even remember when -- how long a time it was from the time that I -- I was called in and this incident happened.

Linthicum expressed some uncertainty multiple times during direct examination.

Younglove: And do you remember -- did they ask you whether you tried to charge that person?

Linthicum: I think they asked me if I did try to charge that person, yeah.

Also,

Younglove: Do you think they asked you more questions on than that [sic]? You just can't remember?

Linthicum: That's correct.

Lutts testified that she did not ask Linthicum any questions about any of the complaints. Rather, she said she described the complaints and attempted to provide coaching. Gardner did not intend to participate in the meeting and was in the shared office to complete other work but ended up participating. She indicated that Lutts asked if Linthicum was doing okay and if he understood what the employee policies were but did not ask Linthicum any questions about the complaints. Heikkila, an intentional attendee of the meeting, indicated that she was present to observe an example of employee coaching and to meet Linthicum. Heikkila testified that Linthicum was not asked any questions about the complaints.

At some point during the meeting, an upcoming refresher training was mentioned. This routine training, which all operators completed, was attended by Linthicum sometime after the meeting. Linthicum asked twice more if he should have a union representative with him and was informed by Lutts, Gardner, and Heikkila that he did not as no discipline would be issued, after which Linthicum left the room and ended the meeting. Linthicum received no discipline for the complaints or for leaving the meeting, and the employer did not seek to continue the meeting at a

later time. Linthicum was concerned about the meeting, and the next day he informed his shop steward about it and his questions regarding union representation.

ANALYSIS

Applicable Legal Standards

The burden of proof in an unfair labor practice lies with the complainant. *State – Family Child Care Providers*, Decision 12781-A (PECB, 2017). To prove interference, the complainant must prove, by a preponderance of the evidence, the employer's conduct interfered with protected employee rights. *Grays Harbor College*, Decision 9946-A (PSRA, 2009); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *remedy aff'd*, *Pasco Housing Authority v. Public Employment Relations Commission*, 98 Wn. App. 809 (2000).

In *National Labor Relations Board v. Weingarten* (*Weingarten*), 420 U.S. 251 (1975), the Supreme Court of the United States affirmed a National Labor Relations Board (NLRB) decision holding that, under the National Labor Relations Act (NLRA), an employee has the right to be accompanied and assisted by 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.

As explained in *Washington State Patrol*, Decision 4040 (PECB, 1992), and *Seattle School District*, Decision 10066-B (PECB, 2010), in addition to the employer rejecting the employee's request, four elements are necessary for *Weingarten* rights to be applicable:

1. The right to representation attaches only where the employer compels the employee to attend an investigatory meeting.
2. A significant purpose of the interview must be (or becomes) to obtain facts related to a disciplinary action.

3. The employee must reasonably believe potential discipline might result from the information obtained during the interview. *Mason County*, Decision 7048 (PECB, 2000).
4. The employee must request the presence of a union representative.¹

An employee has a right to union representation at an “investigatory” interview that the employee reasonably believes could result in discipline. *City of Bellevue*, Decision 4324-A (PECB, 1994) (citing *National Labor Relations Board v. Weingarten*, 420 U.S. 251; *Okanogan County*, Decision 2252-A). An investigatory interview exists where the employer seeks information from the employee. *Cowlitz County*, Decision 6832-A (PECB, 2000). The employer’s questions must relate to alleged misconduct by the employee. Then the employee must reasonably believe the interview might result in disciplinary action. *Clover Park School District*, Decision 7073 (EDUC, 2000). An employee’s fear of a supervisor does not translate into an automatic right to representation in all meetings with that supervisor. *Clover Park School District*, Decision 7073. An employee’s subjective perceptions will not constitute reasonable grounds for concerns about potential discipline; rather, objective standards based on all the circumstances of a particular case determine if the concerns are reasonable or not. *Mason County*, Decision 7048 (citing *Spartan Stores, Inc. v. National Labor Relations Board*, 628 F.2d 953 (6th Cir. 1980)).

The Commission focuses on the circumstances of the interview in determining whether it comes under *Weingarten*. An employer’s assurances that the inquiry is non-disciplinary do not protect the employer from *Weingarten* violations if the employer changes direction during the meeting and converts an announced non-disciplinary, “counseling” session into an investigation. *Cowlitz County*, Decision 6832-A. The Commission is mindful that the employee whose rights were enforced in *Weingarten* was disciplined for something she “blurted out” during the interview where she was denied union representation, rather than for the allegation occasioning the

¹ Corollary to this request, a denial or restrictions placed on the union representative that prevents the representative from providing assistance are also required. See *City of Bellevue*, Decision 4324-A; *Washington State Patrol*, Decision 4040.

interview. *City of Vancouver*, Decision 7013 (PECB, 2000). The Commission has historically firmly protected employees' *Weingarten* rights. Employers who dissuade employees from exercising those rights take on substantial risk. *Cowlitz County*, Decision 6832-A. On the other hand, the Commission recognizes that an employer has the lawful option of dispensing with the interview, in which case *Weingarten* is inapplicable. *Morton School District*, Decision 6735 (PECB, 1999).

Application of Standards

The union is unable to meet the burden of proof required to show interference as outlined by *Washington State Patrol*, Decision 4040, specifically, elements one and two. While Linthicum felt he was required to meet with Lutts when she requested he do so, this meeting was not an "investigatory meeting," and Linthicum was allowed to leave the meeting at a time of his choosing. Additionally, this meeting was not intended to be—nor did it become—an interview. The union was unable to prove that Linthicum was asked any questions about the complaints, which is a clear requirement of any interview.

The union argued that Linthicum had a reasonable belief he could face disciplinary action because he had previously been disciplined and placed on a "last chance agreement" and was entering a meeting with three members of management (two of whom had the ability to issue discipline). However, as there was no interview and *Weingarten* rights are only applicable to interviews, Linthicum's beliefs are insufficient to prove a violation occurred.

CONCLUSION

The union did not prove that Linthicum was subject to an investigatory interview by a preponderance of the evidence and, thus, was unable to prove that the employer interfered with Linthicum's right to union representation. Accordingly, the complaint is dismissed.

FINDINGS OF FACT

1. Grays Harbor Transportation Authority (employer) is a public employer with the meaning of RCW 41.56.030(13).

2. The Amalgamated Transit Union, Local 1765 is a bargaining representative with the meaning of RCW 41.56.030(2).
3. Mark Linthicum is currently employed as a “B Board Operator” by the employer, a role in which Linthicum acts as a substitute bus driver. Since beginning work for the employer on August 24, 2016, Linthicum has held other positions with the employer.
4. Linthicum is a member of the union and has never held any leadership positions within the union.
5. On March 12, 2020, the employer conducted a meeting with Linthicum, which gave rise to the instant complaint. On this date, Operations Manager Diane Lutts approached Linthicum in the break room and asked that Linthicum return with Lutts to her office. Lutts shares a small office with Operations Manager Terri Gardner, who was in the office at the time. Katie Heikkila, the employer’s new Human Resources specialist, was also in the office. The office door was closed during the meeting.
6. Based on previous experience with the employer’s investigation and disciplinary process and his observation of the three members of management at the meeting, at the beginning of the meeting Linthicum believed he was in trouble. Linthicum asked if he needed a union representative at the meeting. He was informed that he did not need union representation as there would be no discipline resulting from the meeting. Lutts then began to describe four customer complaints that the employer had received recently about Linthicum’s time as a driver.
7. The hearing testimony of the four witnesses at the meeting revealed conflicting memories of the event, which occurred almost one year prior. For example, Linthicum remembers that the meeting began before Heikkila entered the room; however, Lutts, Gardner, and Heikkila remember Heikkila being in the office at the start of the meeting.
8. Linthicum testified that he was asked questions about the complaints; however, he expressed uncertainty about these questions because of how long ago the meeting was held. For example:

Younglove: Do you remember -- do you remember any of the questions they asked? Did they ask you why you did that or --

Linthicum: Yeah, I -- yeah, I think so. And I'm -- I don't remember why I -- it was some time -- I don't even remember when -- how long a time it was from the time that I -- I was called in and this incident happened.

9. Linthicum expressed some uncertainty multiple times during direct examination.

Younglove: And do you remember -- did they ask you whether you tried to charge that person?

Linthicum: I think they asked me if I did try to charge that person, yeah.

Also,

Younglove: Do you think they asked you more questions on than that [sic]? You just can't remember?

Linthicum: That's correct.

10. Lutts testified that she did not ask Linthicum any questions about any of the complaints. Rather, she said she described the complaints and attempted to provide coaching.
11. Gardner did not intend to participate in the meeting and was in the shared office to complete other work but ended up participating. She indicated that Lutts asked if Linthicum was doing okay and if he understood what the employee policies were but did not ask Linthicum any questions about the complaints.
12. Heikkila, an intentional attendee of the meeting, indicated that she was present to observe an example of employee coaching and to meet Linthicum. Heikkila testified that Linthicum was not asked any questions about the complaints.
13. At some point during the meeting, an upcoming refresher training was mentioned. This routine training, which all operators completed, was attended by Linthicum sometime after the meeting.

14. Linthicum asked twice more if he should have a union representative with him and was informed by Lutts, Gardner, and Heikkila that he did not as no discipline would be issued, after which Linthicum left the room and ended the meeting.
15. Linthicum received no discipline for the complaints or for leaving the meeting, and the employer did not seek to continue the meeting at a later time. Linthicum was concerned about the meeting, and the next day he informed his shop steward about it and his questions regarding union representation.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has statutory jurisdiction in this matter pursuant to chapter 41.56 RCW and chapter 391-45 WAC.
2. By the actions described in findings of fact 3–15, the employer did not interfere with employee rights in violation of RCW 41.56.140(1), by denying an employee’s request for union representation during an investigatory interview.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

ISSUED at Olympia, Washington, this 15th day of July, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



ERIN J. SLONE-GOMEZ, 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.



RECORD OF SERVICE

ISSUED ON 07/15/2021

DECISION 13376 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 132777-U-20

EMPLOYER: GRAYS HARBOR TRANSPORTATION AUTHORITY

REP BY: KEN MEHIN
GRAYS HARBOR TRANSPORTATION AUTHORITY
705 30TH ST
HOQUIAM, WA 98550
kmehin@ghtransit.com

JOHN LEE
SUMMIT LAW GROUP PLLC
315 5TH AVE S STE 1000
SEATTLE, WA 98104
johnl@summitlaw.com

PARTY 2: AMALGAMATED TRANSIT UNION LOCAL 1765

REP BY: DAVID SHARWARK
AMALGAMATED TRANSIT UNION LOCAL 1765
906 COLUMBIA ST SW STE 301
OLYMPIA, WA 98501
president.ba@atu1765.org

EDWARD EARL YOUNGLOVE III
YOUNGLOVE & COKER, P.L.L.C.
1800 COOPER PT RD SW BLDG 16
PO BOX 7846
OLYMPIA, WA 98507-7846
edy@ylclaw.com