

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GERRIT KISCHNER,

Complainant,

vs.

SEATTLE SCHOOL DISTRICT,

Respondent.

CASE 141537-U-24

DECISION 14039 - EDUC

CAUSE OF ACTION STATEMENT
AND ORDER OF PARTIAL
DISMISSAL

Gerrit Kischner, complainant.

Sharan Singh and *Parker A. Howell*, Attorneys at Law, Porter Foster Rorick LLP
for the Seattle School District.

On December 6, 2024, Gerrit Kischner (complainant) filed an unfair labor practice complaint against the Seattle School District (employer). The complaint was reviewed under WAC 391-45-110.¹ A partial deficiency notice issued on December 23, 2024, notified Kischner that a cause of action could not be found at that time for some of the alleged violations. Kischner was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the deficient allegations.

On January 13, 2025, Kischner filed an amended complaint. The Unfair Labor Practice Administrator dismisses the deficient allegations and issues a cause of action statement for other allegations of the amended complaint.

¹ At this stage of the proceedings, all of the facts alleged in the complaint or amended 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.

ISSUES

The amended complaint alleges the following:

Employer interference with employee rights in violation of RCW 41.59.140(1)(a) within six months of the date the complaint was filed, by threats of reprisal or force or promises of benefit made to Gerrit Kischner while he was engaged in union activity.

Employer discrimination in violation of RCW 41.59.140(1)(c) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)] within six months of the date the complaint was filed, by placing Gerrit Kischner on administrative leave in reprisal for union activities protected by chapter 41.59 RCW.

Employer discrimination in violation of RCW 41.59.140(1)(c) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)] when Gerrit Kischner first learned of the violation within six months of the date the complaint was filed, by issuing a negative evaluation for Gerrit Kischner in reprisal for union activities protected by chapter 41.59 RCW.

Employer interference with employee rights in violation of RCW 41.59.140(1)(a) by refusing to speak to a union representative (*Weingarten* right) in connection with an unidentified investigatory interview.

The interference and discrimination allegations of the amended complaint states a cause of action under WAC 391-45-110(2) for further case proceedings before the Commission.

The *Weingarten* allegation of the amended complaint does not state a cause of action and is dismissed.

BACKGROUND

Gerrit Kischner (complainant) was a Principal at the Seattle School District (employer) and was represented by the Principals' Association of Seattle Schools (union).

While a principal he served on the union's executive board, on the union's bargaining team, and as the union president. While filling these roles Kischner consistently engaged in protected activity related to working conditions and wages.

Multiple facts in the complaint occurred between April 2021, and June 5, 2024.

On June 6, 2024, Kischner learned that the employer had issued a negative summative evaluation for the 2023-2024 school year. Kischner was mandated to continue on a comprehensive cycle evaluation and a formal plan of support even though Kischner's performance was proficient overall.

On June 7, 2024, Kischner was placed on paid, nondisciplinary administrative leave because of an unexplained allegation that suggested serious misconduct. This occurred while Kischner was preparing for a public mediation hearing on an appeal of a previous suspension. The hearing was scheduled for September 2024.

On August 1, 2024, Kischner emailed the employer seeking an update on his administrative leave. The employer allegedly responded on August 7, 2024, stating that all communication would happen with Kischner's attorney. The employer allegedly refused to interact with Kischner or his union representative.

ANALYSIS

Weingarten

Applicable Legal Standard

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).

As examiners explained in *State – Washington State Patrol*, Decision 4040 (PECB, 1992) and *Seattle School District*, Decision 10066-B (PECB, 2010), there are four elements 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.

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.

Application of Standard

The amended complaint alleges that Kischner’s *Weingarten* rights were violated. The amended complaint lacks facts necessary to allege a *Weingarten* violation. Kischner alleges that the employer’s response to the August 1 inquiry was a violation. First, the amended complaint does not allege the employer Kischner to a meeting, which was investigatory in nature. Second, it also does not allege that Kischner reasonably believed discipline might result from the interview. Third,

it does not allege that Kischner requested union representation during a meeting and that the employer rejected the request. Because the complaint lacks facts necessary to allege a *Weingarten* violation, the *Weingarten* violation must be dismissed.

ORDER

1. Assuming all of the facts alleged to be true and provable, the interference and discrimination allegations of the amended complaint state a cause of action, summarized as follows:

Employer interference with employee rights in violation of RCW 41.59.140(1)(a) within six months of the date the complaint was filed, by threats of reprisal or force or promises of benefit made to Gerrit Kischner while he was engaged in union activity.

Employer discrimination in violation of RCW 41.59.140(1)(c) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)] within six months of the date the complaint was filed, by placing Gerrit Kischner on administrative leave in reprisal for union activities protected by chapter 41.59 RCW.

Employer discrimination in violation of RCW 41.59.140(1)(c) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)] when Gerrit Kischner first learned of the violation within six months of the date the complaint was filed, by issuing a negative evaluation for Gerrit Kischner in reprisal for union activities protected by chapter 41.59 RCW.

These allegations will be the subject of further proceedings under chapter 391-45 WAC.

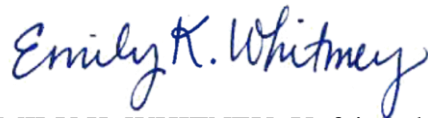
2. The respondent shall file and serve an answer to the allegations listed in paragraph 1 of this order within 21 days following the date of this order. The answer shall
 - (a) specifically admit, deny, or explain each fact alleged in the amended complaint, except if the respondent states it is without knowledge of the fact, that statement will operate as a denial; and
 - (b) assert any affirmative defenses that are claimed to exist in the matter.

The answer shall be filed and served in accordance with WAC 391-08-120. Except for good cause shown, if the respondent fails to file a timely answer or to file an answer that specifically denies or explains facts alleged in the amended complaint, the respondent will be deemed to have admitted and waived its right to a hearing on those facts. WAC 391-45-210.

3. The allegations of the amended complaint concerning *Weingarten* are DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 6th day of February, 2025.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



EMILY K. WHITNEY, Unfair Labor Practice Administrator

Paragraph 3 of this order will be the final order of the agency on any defective allegations, unless a notice of appeal is filed with the Commission under WAC 391-45-350.



RECORD OF SERVICE

ISSUED ON 02/06/2025

DECISION 14039 - EDUC has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 141537-U-24

EMPLOYER: SEATTLE SCHOOL DISTRICT

REP BY: GREG NARVER
SEATTLE SCHOOL DISTRICT
2445 3RD AVE S
SEATTLE, WA 98134
gcnarver@seattleschools.org

SHARAN SINGH
PORTER FOSTER RORICK LLP
601 UNION ST STE 800
SEATTLE, WA 98101
sharan@pfrwa.com

PARKER A. HOWELL
PORTER FOSTER RORICK LLP
601 UNION ST STE 800
SEATTLE, WA 98101-2341
parker@pfrwa.com

PARTY 2: GERRIT KISCHNER

REP BY: GERRIT KISCHNER
6326 19TH AVE NE
SEATTLE, WA 98115-6904
gerrit@baconpress.net