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## THE RIGHTS OF EMPLOYEES TO A FAIR PREDISCIPLINARY PROCESS: PART I.

Washington public safety employees have a number of constitutional and statutory rights that ensure that the procedures used to investigate disciplinary charges against them are fair and proper. This article is the first in a series concerning those procedural rights.

In this series we will discuss the *Weingarten* right to union representation during the course of a disciplinary interview, the *Garrity* right to protection from self-incrimination, and the *Loudermill* right to notice and hearing before serious discipline is imposed. Additionally, we will consider a number of the other legal and constitutional guarantees against unfair or unduly invasive investigative tactics. In this first article we will introduce the *Weingarten* right to union representation.

The *Weingarten* rule adopted by the NLRB and approved by the United States Supreme Court has also been adopted and applied by Washington's Public Employment Relations Commission (PERC.) The *Weingarten* rule requires that an employee subject to discipline be permitted to have a union representative during any discipline investigation upon request.

In *NLRB v. Weingarten*, the United States Supreme Court held that it was an unfair labor practice to deny an employee's request for union representation during an investigatory interview. The Court based its finding on

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Section 8(a)(1) of the National Labor Relations Act which provides that it is an unfair labor practice for an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title." The right guaranteed is provided by Section 7 of the Act, which gives employees the right "to engage in . . . concerted activities for . . . mutual aid or protection . . . ."

Although Washington state public employees are not covered by the NLRA, PERC has ruled that they are afforded the same right to union representation under the Public Employees Collective Bargaining Act. Specifically, RCW 41.56.040 and 41.56.140(1) have been cited as the basis of this right.

In a 1985 case involving the Okanogan County Sheriff's Office, PERC first adopted the federal *Weingarten* rule. In the original line of *Weingarten* decisions, PERC indicated there were four elements as follows: (1) the employer must compel the employee to attend the investigatory meeting; (2) the main purpose of the meeting was investigatory in nature, meaning the employer was attempting to obtain facts upon which to base disciplinary action; (3) the employee must have made a request for union representation; (4) the employee must have had a reasonable belief that the meeting could result in a disciplinary action. If these elements are met, the employer commits an unfair labor practice by denying the employee the right to a union representative.

In Part II we will discuss what constitutes an "investigatory interview" under the *Weingarten* rule.

**To learn more about Weingarten rights and the other rights of public safety employees visit the Cline and Associates website where you order our book "THE RIGHTS OF WASHINGTON PUBLIC SAFETY EMPLOYEE: REPRESENTATIVE'S MANUAL." This book is a 468 page compendium of labor law materials written especially for those involved in union-side representation of Washington public safety labor organizations.**

***Jim Cline***

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