

## IN THIS ISSUE:

- The Rights of Employees to a Fair Predisiplinary Process: Part III.



# The Cline Newsletter

---

---

Volume 9, Issue 6

November 22, 2004

---

---



999 Third Avenue, Suite 3800  
Seattle, WA 98104  
Telephone: 206.505.5820  
Fax: 206.505.5821  
[www.clinelawfirm.com](http://www.clinelawfirm.com)

24 Hour Emergency Pager:  
206.807.0751

James M. Cline  
[jcline@clinelawfirm.com](mailto:jcline@clinelawfirm.com)

M. Kathleen Kremer, Of Counsel  
[kkremer@clinelawfirm.com](mailto:kkremer@clinelawfirm.com)

Christopher J. Casillas  
[ccasillas@clinelawfirm.com](mailto:ccasillas@clinelawfirm.com)

George E. Merker  
[gmerker@clinelawfirm.com](mailto:gmerker@clinelawfirm.com)

Aaron D. Jeide  
[ajeide@clinelawfirm.com](mailto:ajeide@clinelawfirm.com)

Stephanie L. Woodward  
[swoodward@clinelawfirm.com](mailto:swoodward@clinelawfirm.com)

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

In the previous article in this series we discussed what constitutes an "investigatory interview" sufficient to invoke the *Weingarten* rule. In this issue we discuss what is involved in actually invoking the rule.

PERC has held that the employee must make an *affirmative effort* to request representation in order to invoke the *Weingarten* rule. It is important that public safety unions make their members aware of the necessity to *ask* for representation; the employer has no duty to inform the employee of this right.

Once the request for representation has been made, the right to representation remains in full effect for any subsequent meetings. In *King County*, the employee was subjected to a series of meetings regarding her refusal to settle a grievance she had filed against the employer. At the outset, the employee directed offers of settlement to the union representative and requested representation at the meetings she was called to attend. PERC held that this request carried throughout the series of meetings.

It is true that the employee must affirmatively request union representation. But it is also true that once the *Weingarten* right is invoked, the employer must either acknowledge that right or discontinue the interview.

PERC has specifically held that an employer may not deflect that right by engaging in subterfuge. In *City of*

*“PERC has held that the employee must make an affirmative effort to request representation in order to invoke the Weingarten rule. It is important that public safety unions make their members aware of the necessity to ask for representation; the employer has no duty to inform the employee of this right.”*

*“Once the Weingarten right is invoked, the employer must either acknowledge that right or discontinue the interview.”*

*Seattle*, the Commission found a *Weingarten* violation where an employee had initially made arrangements for a union representative and was then told by the employer that it was not a disciplinary interview although later it proved, in fact, to be one.

There has been some litigation concerning under what circumstances an “investigatory interview” has commenced which would permit an employee to assert his or her *Weingarten* right. In this next article in this series we will consider whether it is the employee or the employer who is allowed to make that determination.

**To learn more about Weingarten rights and the other rights of public safety employees visit the Cline and Associates website where you can 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***

*This newsletter is a publication of the law firm of Cline and Associates. It reports on news and developments in the area of public-sector labor law. It is offered as an aid to our clients and readers and is not a substitute for legal advice. Clients are advised to request specific legal advice when addressing specific situations. Names can be added or removed from this newsletter mailing list by replying back on this email to [clinelawfirm@clinelawfirm.com](mailto:clinelawfirm@clinelawfirm.com).*

*Further information from Cline and Associates and past newsletters are available on our website at:*  
[www.clinelawfirm.com](http://www.clinelawfirm.com)