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The Cline Newsletter

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The Rights of Employees to a Fair Predisciplinary Process: Part IV.

In the previous articles in this series we have discussed that an employee may assert their *Weingarten* right to union representation when they are involved in an investigatory interview. In this issue we consider who defines whether the meeting is or is not an investigatory interview.

The Weingarten rule allows the *employee* to make that determination to invoke the right whenever they have a reasonable belief that the interview they are participating in could result in discipline. There has been some litigation concerning the *Weingarten* requirement that there be a "reasonable" belief that the interview will result in discipline. But PERC has been clear that it does not matter what the *employer* believes. The question is the reasonable perception of the *employee*. For example, an employer designation of an employee as merely a "non-subject witness" in an investigation is not controlling. Despite assurances by the employer that an employee is not the target of the investigation, a *Weingarten* right exists if the employee reasonably believes they could be disciplined.

"PERC has been clear that it does not matter what the employer believes. The question is the reasonable perception of the employee."

It is clear this standard applies even when the employer never contemplated the meetings would ever lead to discipline. For example, in *King County*, the employer called the employee in for several meetings for the purpose of discussing her refusal to settle a grievance. Then the employer proceeded to discuss her disobedience of a direct order and "asked if she understood the chain of command." PERC found that these circumstances gave the employee good reason to believe she could be subject to discipline and gave her a right to insist on a union representative.

WEINGARTEN RIGHTS
• Applies When Employee Reasonably Believes Discipline May Result • Employee Must Affirmatively Request Representation • Representative Has Right to Active, Yet Nondisruptive Participation • Employee Has Right to Intermissions to Confer with Representative • Once Invoked, Right Applies to All Subsequent Interviews

Furthermore, "under *Weingarten*, the existence of reasonable grounds is not predicated upon evaluating the subjective perceptions of individuals in each case, but upon objective standards based upon all the circumstances of the particular case." Therefore, unlawful intent or motivation by the employer is not a prerequisite to a *Weingarten* violation.

In *City of Seattle,* the Commission stated:

> The collective bargaining statute and the *Weingarten* precedents make no distinction between "voluntary" meetings and other types of meetings; the employee is entitled to union representation, upon request, if the possibility of discipline is reasonably perceived by the employee.

In the next article in this series we will consider the practical question of when the Weingarten right is invoked so as to balance the employees' right to representation with the employer's right to investigate alleged misconduct.

> *"Despite assurances by the employer that an employee is not the target of the investigation, a* Weingarten *right exists if the employee reasonably believes they could be disciplined."*

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

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