City of Quincy, Decision 11103 (PECB, 2011)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LISA ROWLAND, Complainant, vs. CITY OF QUINCY, Respondent.	CASE 23666-U-10-6038 DECISION 11103 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Carman Law Office, Inc., by *Janelle M. Carman,* Attorney at Law, for the complainant.

The Wesley Group, by *Kevin Wesley,* Labor Relations Consultant, for the employer.

On December 7, 2010, Lisa Rowland filed an unfair labor practice complaint with the Public Employment Relations Commission against the City of Quincy (employer). The complaint alleged employer interference with employee rights in violation of RCW 41.56.140(1) by denial of Rowland's right to union representation (*Weingarten* right) in connection with an investigatory interview. Unfair Labor Practice Manager David Gedrose issued a preliminary ruling on December 9, 2010, under WAC 391-45-110, finding a cause of action to exist, and the Commission assigned the matter to Examiner Stephen W. Irvin on December 22, 2010. I presided over a formal hearing on March 29, 2011, and both parties filed post-hearing briefs for consideration.

ISSUE

Did the employer interfere with employee rights in violation of RCW 41.56.140(1) by denial of Rowland's right to union representation (*Weingarten* right) in connection with an investigatory interview?

I find that the employer committed an unfair labor practice by denying Rowland's right to union representation in connection with an investigatory interview.

APPLICABLE LEGAL STANDARDS

Employer Interference

Chapter 41.56 RCW protects public employees from employer interference when they exercise their collective bargaining rights.

> RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE. No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.
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> RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED. It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter; . . .

The complainant generally has the burden of proving unlawful interference with the exercise of rights protected by Chapter 41.56 RCW. To prevail, the complainant must prove that the employee could reasonably perceive the employer's action as a threat of reprisal or force, or promise of benefit, associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996). In *City of Tacoma*, Decision 6793-A (PECB, 2000), the Commission established that the complainant does not have to prove that the employer intended to interfere with employees' collective bargaining rights or was motivated to do so. *City of Tacoma* also established that the complainant need not show that the employee involved was actually coerced by the employer or that the employer's actions were based on anti-union animus.

Weingarten Right

The United States Supreme Court ruled in *National Labor Relations Board v. Weingarten, Inc.*, 420 U.S. 251 (1975) that an employer commits an interference violation under the National

Labor Relations Act if it denies an employee's request for union representation at an investigatory interview. The Commission held in *Okanogan County*, Decision 2252-A (PECB, 1986) that the rights detailed in *Weingarten* are applicable to employees who exercise collective bargaining rights under Chapter 41.56 RCW.

To establish a *Weingarten* violation, the complainant must prove that: (1) the employer compelled an employee to attend an interview; (2) a significant purpose of the interview was (or became) investigatory, to obtain facts which might support disciplinary action; (3) the employee reasonably believed that discipline might result from the interview; (4) the employee requested the presence of a union representative; and (5) the employer rejected the employee's request and went ahead with the investigatory interview without a union representative present, or required the union representative to remain a passive or silent observer, so as to prevent the representative from assisting the employee.

The Commission has held that an employer has three options when an employee makes a valid request for union representation – (1) grant the request; (2) discontinue the interview; or (3) offer the employee the choice of continuing the interview unrepresented, or of having no interview at all, thereby forgoing any benefit that the interview might have conferred upon the employee. *Omak School District*, Decision 10761-A (PECB, 2010), citing *Roadway Express*, 246 NLRB 1127 (1979). An employer must make the employee aware of the aforementioned choices, and the unrepresented employee must voluntarily agree to continue the interview unrepresented in order for the interview to continue. *Omak School District*, citing *U.S. Postal Service*, 241 NLRB 141 (1979).

As defined in *Cowlitz County*, Decision 6832-A (PECB, 2000), an "investigatory" interview is one in which the employer seeks information from an employee or employees. The Commission also determined in *Cowlitz County* that an employer's characterization of the meeting as non-disciplinary does not protect the employer from claims of a *Weingarten* violation if the nature of the meeting becomes investigatory. An employee's continued participation in an interview after requesting union representation does not negate the request for union representation. *Washington State Patrol*, Decision 4040 (PECB, 1992).

ANALYSIS

While the basis for the complaint is what occurred during a meeting on June 25, 2010, it is necessary to examine preceding events in order to provide context for the meeting. Rowland has been a Police Clerk for the employer since 2004. She is represented for purposes of collective bargaining by Teamsters Local 760 (union). Her supervisors are Chief of Police Richard Ackerman and Captain of Police Gene Fretheim.

Rowland was present at the workplace after the employer placed Police Officer Aaron Doyle on administrative leave sometime before noon on June 25. Rowland, who had a personal relationship with Doyle, testified that she witnessed Doyle packing up his belongings that morning after he was placed on leave, and she further testified that the scene created a tense atmosphere in the office.

Shortly after Doyle left the office, Rowland left for her one-hour lunch break. Approximately 10 minutes into her break, Rowland received a call on her personal cell phone from police captain Fretheim, who told her to return to the office for a meeting but did not reveal the meeting's subject matter. Upon her return, Rowland testified that she was directed to police chief Ackerman's office for the meeting with her supervisors.

One of the fundamental differences in the testimony involves what Rowland was told after her return regarding the nature of the meeting. Ackerman and Fretheim testified that Rowland was told when the meeting began that the meeting was neither disciplinary nor investigatory. Rowland testified that she was not informed of the nature of the meeting at any point, and that Fretheim questioned her immediately after the meeting began.

There's no dispute regarding Rowland's actions after the onset of questioning. She asked to have a union representative present, and Ackerman told her she wasn't entitled to union representation because the meeting was neither disciplinary nor investigatory. Ackerman, who testified that he told Rowland the meeting was "strictly a counseling session," referenced the collective bargaining agreement between the employer and the union, and told Rowland that there was no requirement to have union representation at a meeting involving coaching and counseling.

After Ackerman denied Rowland's request for union representation, Fretheim continued to question Rowland and make notes of her answers. Fretheim testified that his questions were related to posts Rowland made on her Facebook page. The postings had been brought to his attention by another employee, and he believed they were derogatory toward him. The questions, all of which Rowland answered during the approximately 10-minute meeting, included the following:

- Are you happy working here?
- Do you think I micromanage you?
- Do you think I'm stupid?
- Do you want to punch me in the nose?
- Do you want to kick me in the shins?

The most important question in this case, of course, is did the employer violate Rowland's rights when they denied her the opportunity to have union representation at the meeting?

Of the five criteria for establishing a *Weingarten* violation, the parties agree that the employer compelled Rowland to attend an interview, Rowland requested the presence of a union representative, and the employer rejected Rowland's request and went ahead with the interview without a union representative present. The dispute revolves around whether the purpose of the interview was, or became, investigatory, and whether Rowland reasonably believed that discipline might result from the interview.

The employer argues that Ackerman and Fretheim did nothing that would lead Rowland to believe that the interview was investigatory and could result in discipline. Both supervisors testified that Rowland was told at the beginning of the meeting and during it that the meeting was not disciplinary. Furthermore, the employer contends that the meeting's 10-minute duration was far shorter than the normal investigatory interview and was similar to coaching and counseling sessions Rowland had attended before without union representation. Finally, the employer asserts that no discipline was contemplated or arose as a result of the meeting.

Rowland argues that nearly everything the employer did before and during the meeting led her to reasonably believe that the purpose of the meeting was to develop facts related to a disciplinary action. Even if I were to accept the employer's contentions regarding what Ackerman told Rowland about the purpose of the meeting, the fact remains that Ackerman's and Fretheim's actions could easily have given Rowland the belief that she was in an investigatory interview and that discipline could result from the meeting.

The atmosphere around the workplace must be considered when assessing what would have been reasonable for Rowland to believe. On the morning of the meeting with her supervisors, Rowland and others experienced the tension surrounding Doyle being placed on administrative leave. Shortly after Doyle's departure, Rowland left the office for her lunch break, but was summoned back to the office by Fretheim before her break was over to attend a meeting with her supervisors on an undisclosed matter.

With that in mind, Rowland stepped into a closed-door meeting with her supervisors, where she was asked a series of questions related to her job and her attitude toward Fretheim. Faced with these questions and her supervisor taking notes of the answers, it was reasonable for Rowland to believe that she was in trouble with her employer and that discipline might result from the meeting.

When Rowland made the valid request for a union representative, it was the employer's duty to satisfy the requirements enumerated in *Omak School District* and other Commission decisions. Ackerman and Fretheim could have granted the request, discontinued the interview, or offered Rowland the choice of continuing the interview unrepresented or of having no interview at all. Instead, Fretheim plowed ahead with his questioning after Ackerman stated that Rowland wasn't entitled to union representation.

CONCLUSION

Through its actions during an interview with Lisa Rowland on June 25, 2010, the employer committed an unfair labor practice by denying Rowland's right to union representation in

connection with an investigatory interview. The purpose of the interview was investigatory and Rowland reasonably believed that discipline might result from the interview.

FINDINGS OF FACT

1. The City of Quincy is a public employer within the meaning of RCW 41.56.030(13).

2. Lisa Raymond has been a Police Clerk at the City of Quincy since 2004. She is represented for purposes of collective bargaining by Teamsters Local 760, a bargaining representative within the meaning of RCW 41.56.030(2).

3. Raymond's supervisors are Chief of Police Richard Ackerman and Captain of Police Gene Fretheim.

4. Rowland was present at the workplace after the employer placed Police Officer Aaron Doyle on administrative leave sometime before noon on June 25, 2010.

5. Shortly after Doyle left the office, Rowland left for her one-hour lunch break.

6. Approximately 10 minutes into her lunch break, Rowland received a call on her personal cell phone from police captain Fretheim, who told her to return to the office for a meeting but did not reveal the meeting's subject matter.

7. The meeting was called as a result of posts Rowland made on her Facebook page that Fretheim believed were derogatory toward him.

8. Upon her return, Rowland was directed to police chief Ackerman's office for the meeting with her supervisors.

9. Fretheim questioned Rowland immediately after the meeting began.

10. Rowland asked to have a union representative present, and Ackerman told her she wasn't entitled to union representation because the meeting was neither disciplinary nor investigatory.

11. After Ackerman denied Rowland's request for union representation, Fretheim continued to question Rowland and make notes of her answers.

12. The questions, all of which Rowland answered during the approximately 10-minute meeting, included the following:

- Are you happy working here?
- Do you think I micromanage you?
- Do you think I'm stupid?
- Do you want to punch me in the nose?
- Do you want to kick me in the shins?

13. The purpose of the June 25, 2010, meeting was investigatory, and Rowland reasonably believed that discipline might result from the meeting.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction is this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. On the basis of Findings of Fact 4 through 13, the employer interfered with employee rights in violation of RCW 41.56.140(1) by denial of Lisa Rowland's right to union representation (*Weingarten* right) in connection with an investigatory interview.

ORDER

The CITY OF QUINCY, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Interfering with, restraining or coercing its employees in their exercise of their right to union representation (*Weingarten* right) in connection with an investigatory interview.

   b. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under the laws of the state of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

   a. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

   b. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the City Council of the City of Quincy, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

   c. Notify the complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice provided by the Compliance Officer.

d. Notify the Compliance Officer of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Compliance Officer with a signed copy of the notice he provides.

ISSUED at Olympia, Washington, this 22nd day of June, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

STEPHEN W. IRVIN, 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.

CASE 23666-U-10-6038
DECISION 11103 - PECB

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT THE *CITY OF QUINCY* COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY interfered with employee rights in violation of RCW 41.56.140(1) by denial of Lisa Rowland's right to union representation (*Weingarten* right) in connection with an investigatory interview.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL NOT interfere with, restrain or coerce employees in their exercise of their right to union representation in an investigatory interview where the employee reasonably believes that discipline might result from the interview.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DO NOT POST OR PUBLICLY READ THIS NOTICE.

AN OFFICIAL NOTICE FOR POSTING AND READING WILL BE PROVIDED BY THE COMPLIANCE OFFICER.

The full decision is published on PERC's website, www.perc.wa.gov.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ ROBBIE DUFFIELD

CASE NUMBER:	23666-U-10-06038	FILED:	12/07/2010	FILED BY:	PARTY 2
DISPUTE:	ER INTERFERENCE				
BAR UNIT:	NON UNIFORMED				
DETAILS:	see 23753-S-11-0203				
COMMENTS:					

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