STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 117, Complainant, vs. STATE – CORRECTIONS, Respondent.	CASE 27063-U-15 DECISION 12417 - PSRA PRELIMINARY RULING AND ORDER OF PARTIAL DISMISSAL

On March 3, 2015, Teamsters Local 117 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Washington State Department of Corrections (employer) as respondent. The union amended its complaint on March 26, 2015. The amended complaint was reviewed under WAC 391-45-110 and a preliminary ruling was issued on April 10, 2015. On April 27, 2015, the union moved to amend the complaint a second time, and the motion was granted. On April 28, 2015, I was assigned to conduct further proceedings under Chapter 391-45 WAC. On July 27, 2015, the union filed a third amended complaint.

The allegations of the third amended complaint concern employer discrimination in violation of RCW 41.80.110(1)(c) and (d) and interference with employee rights in violation of RCW 41.80.110(1)(a). One of the interference allegations in the third amended complaint states that the employer's Sex Offender Treatment Program Director called bargaining unit employee John Crowley into a meeting, denied him union representation, and issued him discipline.

The third amended complaint was reviewed under WAC 391-45-110,[1] and a partial deficiency notice issued on August 6, 2015, indicated it was not possible to conclude that a cause of action

[1] At this stage of the proceedings, all of the facts alleged in the 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.

existed for the alleged *Weingarten* interference violation. The union was given a period of 14 days in which to file and serve an amended complaint or face dismissal of the *Weingarten* allegation. The union did not file an additional amendment or withdrawal.

The defective *Weingarten* interference allegation in the third amended complaint is dismissed for failure to state a cause of action. The third amended complaint states causes of action for employer discrimination and interference. The employer must file and serve its answer to the third amended complaint within 21 days following the date of this decision.

DISCUSSION

Weingarten Rights Only Apply to Investigatory Interviews

In *National Labor Relations Board (NLRB) v. Weingarten*, 420 U.S. 251 (1975) the Supreme Court of the United States affirmed an NLRB decision holding that under the National Labor Relations Act, 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).

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; *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.

Employer's Meeting with Crowley Was Not Investigatory

The complaint alleges that the employer had a meeting with Crowley on July 21, 2015. During the meeting the employer issued discipline resulting from a previous allegation of inappropriate use of state resources. No facts alleged indicate that the meeting was investigatory in nature or that any questions were asked that Crowley reasonably believed could result in future discipline. Because the meeting is not alleged to have been investigatory, *Weingarten* rights would not apply.

CONCLUSION

The complaint does not state a cause of action for interference with Crowley's *Weingarten* rights. *Weingarten* rights only apply to investigatory meetings that the employee reasonably believes may result in disciplinary action. The meeting between Crowley and the employer regarding the receipt of discipline is not alleged to have been investigatory. The July 21, 2015, *Weingarten* allegation is dismissed because it does not contain necessary facts to state a cause of action for interference with Crowley's *Weingarten* rights.

NOW, THEREFORE, it is

ORDERED

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

> Employer discrimination in violation of RCW 41.80.110(1)(c) [and if so derivative interference with employee rights in violation of RCW 41.80.110(1)(a)] since September 16, 2014, by including negative and critical language in John Crowley's Performance Development Plan (PDP) in reprisal for union activities protected by Chapter 41.80 RCW.
>
> Employer discrimination in violation of RCW 41.80.110(1)(c) and (d) [and if so derivative interference with employee rights in violation of RCW

41.80.110(1)(a)] since July 21, 2015, by its discipline of Crowley for protected union activities, including his participation in unfair labor practice charges.

Employer interference with employee rights in violation of RCW 41.80.110(1)(a):

1. Since March 3, 2015, by circulating a document titled "SOTP teambuilding" that discourages employees from participating in protected union activity.

2. Since April 21, 2015, by initiating a "just cause" investigation into allegations regarding inappropriate use of state resources by Crowley as a means to retaliate against Crowley's union activities.

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

2. The employer shall file and serve its answer to the allegations listed in paragraph 1 of this Order, within 21 days following the date of this Order.

An answer shall:

a. Specifically admit, deny, or explain each fact alleged in the third amended complaint, as set forth in paragraph 1 of this Order, except if a 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.

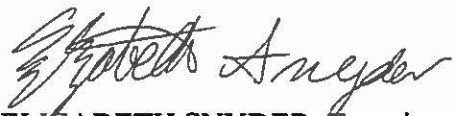
The answer shall be filed with the Commission at its Olympia office. A copy of the answer shall be served on the attorney or principal representative of the person or organization that filed the third amended complaint. Service shall be completed no later than the day of filing. Except for good cause shown, a failure to file an answer within the time specified, or the failure to file an answer to specifically deny or explain a fact alleged in the third amended complaint, will be deemed to be an admission that the fact is true as alleged in

the third amended complaint and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

3. The allegation in the third amended complaint concerning interference with employee rights in violation of RCW 41.80.110(1)(a) since July 21, 2015, by denying Crowley's right to union representation (*Weingarten* rights) in connection with a meeting where discipline was issued, and discrimination in violation of RCW 41.80.110(1)(a), is DISMISSED for failure to state a cause of action.

ISSUED at Olympia, Washington, this 11th day of September, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



ELIZABETH SNYDER, Examiner

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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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DECISION 12417 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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