

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INTERNATIONAL BROTHERHOOD OF PAINTERS AND :
ALLIED TRADES LOCAL UNION 1968 :
 :
v. : Case No. PERA-C-05-538-W
 :
ERIE CITY SCHOOL DISTRICT :

FINAL ORDER

The International Union of Painters & Allied Trades, Local 1968 (Union) filed exceptions with the Pennsylvania Labor Relations Board (Board) on April 13, 2007 challenging a Proposed Decision and Order (PDO) issued on April 5, 2007. In the PDO, the Board Hearing Examiner dismissed the Union's claims that the Erie City School District (District) violated Section 1201(a)(1), (2), (3), (5) and (9) of the Public Employee Relations Act (PERA) by refusing to allow the Union's attorney to attend a Weingarten¹ interview. The District has not filed a response to the exceptions.

In lieu of a hearing, the parties submitted a joint stipulation of facts which establish that on November 7, 2005, the District conducted an investigatory interview of David Welz. (Finding of Fact 3). Union President Robert Tirak and Union Business Agent Dean Bagnoni appeared at the interview with Mr. Welz. (Finding of Fact 4). The Union's attorney, Richard T. Ruth, Esquire, appeared at the interview at the request of the Union, not at the request of Mr. Welz. (Finding of Fact 5). The District refused to permit Mr. Ruth to attend the meeting. (Finding of Fact 6). Mr. Tirak and Mr. Bagnoni remained at the interview to represent Mr. Welz. (Finding of Fact 7).

In its exceptions, the Union claims that the District violated PERA by refusing to allow Mr. Ruth to attend the investigatory interview at the request of the Union. The Union argues that both the employee and the Union were permitted to designate their own Weingarten representatives for an investigatory interview. However, the Pennsylvania Supreme Court has recently addressed Weingarten rights and held as follows:

[T]he Weingarten right of an *individual employee*, that is, the right to obtain a representative to accompany the employee during an interview when the employee reasonably fears that discipline may be imposed by the employer, includes the right to have the union representative of his or her choice, if the assisting union representative is reasonably available and absent extenuating circumstances.

Commonwealth Office of Administration v. Pennsylvania Labor Relations Board, ___ Pa. ___, 916 A.2d 541, 551 (2007) (*emphasis added*).

The Pennsylvania Supreme Court also expressly recognized that the right to representation under Weingarten derives from the right of the individual employee to engage in concerted activities for mutual aid and protection. The Pennsylvania Supreme Court rejected the Commonwealth Court's view that Weingarten involves the collective bargaining rights of the union. Id. at 549. The Pennsylvania Supreme Court's decision is consistent with the Board's long-standing determination that the right to representation at an investigatory interview is an individual right and does not involve the collective bargaining rights of the union. Pennsylvania Labor Relations Board v. Conneaut School District, 10 PPER ¶10092 (Nisi Decision and Order, 1979) *affirmed*, 12 PPER ¶12155 (Final Order, 1981); Cheltenham Township Police Association v. Cheltenham Township, 36 PPER 4 (Final Order, 2005)(*citing Weingarten*, 420 U.S. at 259, and Slaughter v. NLRB, 794 F.2d 120 (3rd Cir. 1986)). Accordingly, the Board dismisses alleged bargaining violations of PERA arising from Weingarten interviews. Cheltenham Township, *supra*.

¹ National Labor Relations Board v. J. Weingarten, Inc., 420 U.S. 251, 95 S. Ct. 959 (1975).

Moreover, recognizing that the Weingarten right is a right of the employee, and not the union, the Board has previously rejected claims that a union engages in statutorily-protected activity by attempting to impose a Weingarten representative upon an employee. Upper Gwynedd Township Police Association v. Upper Gwynedd Township, 33 PPER ¶33133 (Final Order, 2002). Consistent with long-standing Board precedent, the Pennsylvania Supreme Court expressly recognized in Office of Administration that it is "the employee's choice of union representative" that is at issue under Weingarten. Office of Administration, 916 A.2d at 543. As the stipulated facts establish, Mr. Welz did not request that Mr. Ruth represent him during the Weingarten interview. Therefore, the Board finds that the District did not violate Mr. Welz's Weingarten right by denying the Union's request for its attorney to attend the investigatory interview.

Accordingly, after a thorough review of the exceptions and all matters of record, the Board shall dismiss the Union's exceptions and make the PDO final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the International Union of Painters & Allied Trades, Local 1968 are hereby dismissed, and the May 7, 2007 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member and James M. Darby, Member, this nineteenth day of June, 2007. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.