

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SILVIA ZARATE,

Complainant,

vs.

WASHINGTON STATE DEPARTMENT OF  
CHILDREN, YOUTH, AND FAMILIES,

Respondent.

CASE 133314-U-21

DECISION 13329-B - PSRA

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

*Ada K. Wong and Jordan T. Wada, Attorneys at Law, AKW Law, P.C., for Silvia Zarate.*<sup>1</sup>

*Sara L. Wilmot, Assistant Attorney General and Cheryl L. Wolfe, Senior Counsel, Attorney General Robert W. Ferguson, for the Washington State Department of Children, Youth, and Families.*

On January 27, 2021, Silvia Zarate (Zarate or complainant) filed an amended complaint in an unfair labor practice case against the Washington State Federation of State Employees (WFSE or union) which included new allegations against her former employer, the Washington State Department of Children, Youth, and Families (DCYF or employer). WFSE is the employee organization that served as her collective bargaining representative while she was employed as a Social Service Specialist 3 at DCYF. The new allegations claimed that DCYF discriminated against Zarate by terminating her employment after she communicated an intent to join in a grievance and advocate for herself and fellow employees.

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<sup>1</sup> Following the briefing of this case, Jordan T. Wada informed the agency that he was leaving the AKW Law P.C. law firm and withdrawing as counsel.

In subsequent proceedings, the allegations against the union were dismissed, but the allegations against the employer were found to state a cause of action for discrimination.<sup>2</sup> I was assigned to serve as hearing examiner and held a hearing on the complaint against the employer on November 1, 2, and 3, 2022, via Zoom videoconference. The parties submitted post-hearing briefs on January 6, 2023, closing the record.

### ISSUE

Did the employer commit discrimination in violation of RCW 41.80.110(1)(c) when it terminated Zarate's employment after she communicated to the employer an intent to file a grievance?

Based on the record as a whole, I find that the employer did not commit an unfair labor practice when it terminated Zarate's employment. The employer terminated Zarate's employment because she gained unauthorized access to a database of confidential case information and for pending matters related to allegations of child abuse that prevented her from performing the main functions of her job.<sup>3</sup>

Initially, I find that Zarate successfully established a prima facie case of discrimination against the employer. She engaged in protected activity when she communicated to the employer her intent to participate in a grievance and serve as an advocate for herself and her coworkers. Her employment was terminated. The termination of her employment occurred two weeks after she informed the employer of her intent to participate in the grievance and the human resources manager advising the decision maker knew that Zarate had previously engaged in grievance activity.

However, I also conclude that the employer's reasons for terminating her employment - that she gained unauthorized access to confidential information in an employer database, and that she had

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<sup>2</sup> A more thorough recitation of the procedural background of this case can be found in the Commission's decision finding a cause of action against the employer. *Washington State Department of Children, Youth, and Families (Washington Federation of State Employees)*, Decision 13328-A (PSRA, 2021).

<sup>3</sup> The allegations of child abuse were overturned and dismissed after Zarate's employment was terminated.

allegations of child abuse then pending - were not pretextual for discrimination, nor substantially motivated by union animus.

The amended complaint is dismissed.

### BACKGROUND

Zarate worked for DCYF<sup>4</sup> for nearly 13 years until her employment was terminated on December 14, 2020. She held the position of Social Services Specialist 3 in the Child Welfare Field Operations division in the Yakima office. Zarate was passionate about her work with children and families. Prior to the incidents related to this case, she had no performance or discipline issues.

Separate from her employment in Child Welfare, Zarate is also a licensed foster parent. The foster parent licensing program is overseen by the DCYF Licensing Department of Child Protective Services. Although both are part of DCYF, Child Protective Services is administered separately from Child Welfare where Zarate was employed.

Because it involves unsupervised access to children and families, DCYF considers Zarate's position to be a "covered" position in that employees must satisfy DCYF's background check policy to remain qualified to perform the job. The position also afforded Zarate access to DCYF's FamLink database containing confidential case management and intake data for various aspects of DCYF's operation, including both Child Welfare and Child Protective Services.

The intersection between Zarate's role as an employee in Child Welfare and her role as a foster parent overseen by Child Protective Services form the factual backdrop for much of the facts that led to this case.

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<sup>4</sup> DCYF is a relatively new state agency and was formed in 2018. Prior to that, the child welfare functions at issue here were housed in the Department of Social and Health Services.

*Child Welfare Division Leadership and Zarate's History of Union Activity*

Dorene Perez is the Regional Administrator and Appointing Authority for the Child Welfare region that includes the Yakima office where Zarate worked. As part of the appointing authority role, she is charged with initiating investigations into alleged employee misconduct and making disciplinary decisions regarding findings of misconduct that result from those investigations. She has ultimate authority on imposing discipline, but does so with the input of various advisors, including those in DCYF Human Resources. DCYF Human Resources works closely with appointing authorities but is not in the appointing authority chain of command. It instead reports through a separate Human Resources chain of command.

In this case, Perez made the decision to terminate Zarate's employment after consulting with Human Resources Manager Phedra Quincey. Quincey had been a WFSE union representative for over 13 years and had previously represented Zarate in that role. She was hired into DCYF Human Resources in 2018 and was promoted to her current role as Human Resources Manager in March of 2020, the role she held at the time DCYF terminated Zarate's employment.

As background, Quincey had been Zarate's union representative when Quincey worked for the union. Approximately three years before the facts of this case took place, in 2017, Zarate served as a leader in the filing and processing of a group grievance related to complaints she and some of her coworkers had against a manager in their department. Quincey served as union representative at the time. The grievance was resolved informally. Later, Zarate reached out to Quincey regarding a workplace safety issue, but after consulting with Quincey, Zarate ultimately decided not to pursue formal action.

*Zarate's Role as a Foster Parent and Subsequently Overturned Allegations of Foster Child Abuse*

On January 23, 2020, Perez was informed by Child Protective Services that Zarate was under investigation related to allegations of child abuse and neglect in her role as a foster parent.

Employees in covered positions, such as Zarate's, who are subject to abuse allegations become unqualified to perform the regular duties of those jobs and are put on alternate assignments while Child Protective Services investigations are conducted. If the Child Protective Services

investigations conclude that the abuse allegations are unfounded, the employee returns to their regular job. If the conclusion is that the allegations are founded, a separate workplace investigation is opened and further employment action can follow, including discipline.

Pending the outcome of the Child Protective Services investigation into the allegations against Zarate, Perez placed Zarate on alternative assignment where she performed primarily clerical duties and where she would not have contact with families and children.

The investigation into the allegations of child abuse by Child Protective Services resulted in what is referred to as a “founded finding” against Zarate. A founded finding “means that [Child Protective Services] investigated the allegation(s) and, based on the information available, has determined that it was more likely than not that the abuse and/or neglect occurred and you [Zarate] are the person responsible for the abuse and/or neglect.”

Child Protective Services orally informed Zarate of the founded finding against her on July 30, 2020. However, the formal letter informing her and notifying her of her appeal rights to challenge the finding was not issued until August 24, 2020, and only after Zarate contacted DCYF Secretary Ross Hunter for assistance.

As noted above, the founded finding served to disqualify Zarate from her performing her regular job duties. She continued on alternative assignment while a separate workplace investigation was conducted related to the founded finding.

In September 2020, Zarate was summoned to appear in Yakima County court related to potential criminal charges against her regarding the child abuse allegations. Criminal charges were issued on October 6, 2020.

At the time Zarate’s employment was terminated by DCYF on December 14, 2020, both the founded finding and criminal charges were standing. However, it is important to note that at all times, Zarate vigorously denied the child abuse allegations and appealed the founded finding and

fought the criminal charges. The criminal charges were subsequently dismissed on April 16, 2021. And following the appeal, the founded finding was also overturned on June 9, 2022.

Although those developments occurred well after DCYF made the decision to terminate Zarate's employment, the record in this case shows that Zarate's name has been cleared as to the child abuse allegations after a process that was lengthy, difficult, and painful.

*Zarate's Unauthorized Access to DCYF Child Protective Services Database*

The other key component of Zarate's misconduct that DCYF cited when terminating her employment was her unauthorized access to "FamLink," DCYF's database of case-related information including restricted information regarding Child Protective Services cases. In her role in the Child Welfare division, Zarate had access to the database to get information that was related to her work. She was subject to and annually signed her acknowledgment of a policy that limited her access to only that information which was necessary for her job.

In Spring of 2020, while conducting a separate workplace investigation, DCYF discovered that Zarate had used her database credentials to gain unauthorized access to confidential Child Protective Services foster parent information that was unrelated to her work in Child Welfare. An investigation showed that she accessed a friend and coworker's foster parent profile four times without a business need and accessed that same coworker's Child Protective Services case file 100 times without a business need. She had also accessed her own foster parent profile 164 times and her own Child Protective Services case files 24 times without a business need. This included a period of time when Zarate was under the Child Protective Services investigation for foster child abuse allegations and ceased only when Zarate's database access ended when she was placed on alternative assignment.

The information Zarate accessed was at least in part related to the Child Protective Services investigation into the child abuse allegations against her and could have given her inside information regarding the status of the investigation and allegations.

*Investigation, Decision to Terminate Zarate's Employment and Zarate's Protected Activity*

On July 31, 2020, Perez opened a workplace investigation into both the founded finding and the unauthorized database access. Workplace investigations are processed through a separate DCYF division from both Child Protective Services and Child Welfare. An investigator was assigned and issued an investigation report on October 14, 2020, that substantiated the allegations.

On November 2, 2020, after reviewing the investigation report and its findings and consulting with Quincey, Perez issued a notice of intent to discipline letter to Zarate. The letter included references to the two aspects of the unauthorized database access (regarding accessing her own records and for accessing those of her friend) and for the founded finding and criminal charge related to the child abuse allegations as potential reasons for taking disciplinary action.

A predisciplinary meeting was held November 12, 2020. During that meeting, Zarate admitted to and accepted responsibility for the unauthorized database access. However, she vigorously denied the child abuse allegations underlying the founded finding and criminal charges. She told Perez and Quincey that she was challenging the allegations and they would be overturned. She also expressed concern over Quincey's role since she had formerly been her union representative.

On November 17, 2020, following the predisciplinary meeting, Zarate sent a letter to Perez which stated in part that "as soon as everything gets overturned, I will be demanding answers and reimbursement for all the damages." She also referenced being an "advocate for better rights and protection for the families, Foster Parents, and my co-workers"

After not receiving a response to the November 17, 2020, letter, Zarate sent another letter to DCYF on November 30, 2020, where she stated: "I am also letting you know that I have joined Maribel Rivera's grievance," "I am joining in" and that she had "no choice but to speak up and advocate for my rights and that of my fellow co-workers." Maribel Rivera was Zarate's friend and coworker who had been terminated on November 20, 2020, at least in part for unauthorized access to the FamLink database.

Perez responded to the letter on December 8, 2020, letting Zarate know that she was in the process of making a determination of discipline on the allegations. On December 14, 2020, Zarate's employment was terminated.

In the final notice of discharge letter, Perez cited the same conduct as in the November 2, 2020, notice of intent to discipline letter as the reasons for terminating Zarate's employment. The conduct included the two aspects of unauthorized database access and the founded finding and criminal charges related to the child abuse allegations that were still standing at the time. However, she added the following: "your off duty conduct which resulted in the founded finding and criminal charge, is detrimental to your work performance or the program of the agency."

On April 16, 2021, approximately five months after her employment was terminated, the criminal charges against Zarate were dismissed. On June 9, 2022, about a year and a half after her employment was terminated, the founded finding against Zarate was overturned by DCYF's Board of Appeals.

## ANALYSIS

### Applicable Legal Standard(s)

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of statutorily protected rights. RCW 41.80.110(1)(c); *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in a discrimination case. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 349 (2014) (citing *Wilmot v. Kaiser Aluminum & Chemical Corp.*, 118 Wn.2d 46 (1991)).

To prove discrimination, the complainant must first establish a prima facie case by showing the following:

1. The employee participated in protected activity or communicated to the employer an intent to do so;



2. The employer deprived the employee of some ascertainable right, benefit, or status;  
and
3. A causal connection exists between the employee's exercise of a protected activity and the employer's action.

*City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349.

Ordinarily, an employee may use circumstantial evidence to establish the prima facie case because respondents do not typically announce a discriminatory motive for their actions. *Wilmot v. Kaiser Aluminum and Chemical Corp.*, 118 Wn.2d at 69 (1991); *Clark County*, Decision 9127-A (PECB, 2007).

Circumstantial evidence consists of proof of facts or circumstances that according to common experience give rise to a reasonable inference of the truth of the fact sought to be proved. *See Seattle Public Health Hospital (AFGE Local 1170)*, Decision 1911-C (PECB, 1984).

If the complaining party establishes a prima facie case, the burden of production shifts to the respondent. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349; *Port of Tacoma*, Decision 4626-A (PECB, 1995). The respondent may articulate a legitimate nondiscriminatory reason for the adverse employment action. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349. The respondent bears the burden of production, not of persuasion. *Id.*

If the respondent meets its burden of production, the complainant bears the burden of persuasion to show that the employer's stated reason was either pretextual or that union animus was a substantial motivating factor for the employer's actions. *Id.*

Application of Standard(s)*Zarate has established her prima facie case of discrimination*

To establish her prima facie case, Zarate must show that she (1) engaged in protected union activity or communicated an intent to do so, (2) was deprived of an ascertainable right, benefit or status, and (3) that there is a causal connection between the two.

I find that Zarate engaged in protected activity in her November 30, 2020, letter to Perez where she communicated her intent to join a grievance with another terminated employee and, in her words, had “no choice but to speak up and advocate for my rights and that of my fellow co-workers.”<sup>5</sup> Protected activity includes filing a grievance. See *Mukilteo School District*, Decision 5899-A (PECB, 1997). Zarate’s comments in her November 30, 2020, letter communicated to DCYF her intent to pursue her rights under the collective bargaining agreement.

Showing that the employer had knowledge of the protected activity is also necessary to satisfy the first element of the prima facie case. *Reardan-Edwall School District*, Decision 6205-A (PECB, 1998). Here, Zarate used the word “grievance” in her letter, a term which has a specific meaning in the context of potential discipline in the collective bargaining context. Further, Quincey had previously served as Zarate’s union representative when Zarate was actively involved in a group grievance and addressing workplace safety issues. Quincey’s role here as human resources advisor to Perez while Perez was making the decision to terminate Zarate’s employment bolsters the conclusion that the employer had knowledge that Zarate was engaged in protected activity when she sent the November 30, 2020, letter.

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<sup>5</sup> Zarate points to numerous activities that she engaged in for which she alleges DCYF retaliated against her by terminating her employment. For instance, she filed an action with the DCYF ombuds, reported to the Auditor’s Office, filed a complaint with the Human Rights Commission, and complained to DCYF Secretary Ross Hunter regarding the status of her Child Protective Services investigations. While those facts inform the background for what was going on during this timeframe, because I find that the November 30, 2020, letter constitutes protected activity, I find it unnecessary to determine whether those other actions, which are less connected to the collective bargaining context, were protected under the collective bargaining laws.

DCYF argues that Zarate did not engage in protected activity with these actions because there was no grievance to join at that time and because the applicable collective bargaining agreement did not afford individual employees the rights to file grievances on their own. For the purposes of establishing protected activity for a prima facie case, I find it sufficient that Zarate communicated her intent to invoke the grievance procedure under the CBA even if she was in fact mistaken as to her individual right to do so or mistaken regarding the existence of another grievance in which to join. She satisfies the first element of the prima facie case.

Zarate also satisfies the second element of the prima facie case. She was deprived of an ascertainable right, benefit, or status when her employment was terminated.

Finally, Zarate established a causal connection between her engaging in protected activity and the termination of her employment. Timing is often a critical circumstantial factor establishing causation where the employer does not announce a discriminatory intent. See *Kennewick School District, Decision 5632-A* (PECB, 1996); *Oroville School District, Decision 6209-A* (PECB, 1998). In this case, Zarate communicated her intent to join a grievance and advocate for the rights of herself and her coworkers on November 30, 2020. DCYF terminated her employment two weeks later on December 14, 2020. Given the lengthy time Zarate was on alternative assignment and under investigation, the fact that the employer made the decision to terminate her employment two weeks after she communicated her intent to join a grievance is sufficient to show causation and establish the prima facie case that DCYF terminated her employment in retaliation for her protected activity.

*DCYF articulated legitimate, nondiscriminatory reasons for terminating Zarate's employment*

DCYF put forth several legitimate, nondiscriminatory reasons for terminating Zarate's employment on December 14, 2020. Specifically, that she violated policy by accessing her friend and coworker's foster parent record and Child Protective Services case information in DCYF's database without a business need, that she violated policy when she accessed her own foster parent record and Child Protective Services case information in the DCYF database without a business need, and that she had a founded finding of child abuse and neglect and a related criminal charge that was pending at that time that disqualified her from doing her job.

*Zarate did not satisfy her burden to show that the reasons were pretextual, or that DCYF was substantially motivated by union animus in terminating Zarate's employment*

Under Washington State's collective bargaining laws, discrimination is only unlawful if it is directed towards activity that is protected under the collective bargaining statutes. The focus of this part of the analysis is narrow. Zarate must prove by a preponderance of the evidence that the reasons the employer gave for terminating her employment were pretextual for the true reason of retaliating against her for engaging in protected activity. A proffered reason for an action is pretextual when the evidence shows it was not, in fact, the true reason for the action. She can also satisfy this burden by proving that, even if the proffered reasons were true, that the decision to terminate her employment was still substantially motivated by union animus.

Zarate acknowledges that she engaged in misconduct as it related to her misuse of DCYF's FamLink system but argues that the real reason she was terminated was due to DCYF's treatment of the founded finding and criminal charges related to the allegations of child abuse and neglect. In her view, until she communicated her intent to participate in a grievance, DCYF was not going to include those elements in her discipline and the reason they did was to bolster their defense against a potential grievance.

Zarate points to flaws in the investigation process and DCYF's back-and-forth on whether to include the founded finding as one of the reasons to terminate her employment. The record shows that during the transition from DSHS to DCYF, there was some confusion as to how to handle that type of situation. It was the first time someone in Perez' line of supervision had a founded finding against them. In an early draft of the termination letter, the founded finding allegations were not included.

Undermining Zarate's theory is the fact that the predisciplinary letter that was issued on November 2, 2020, weeks before she engaged in protected activity, included the same three allegations that ended up in the disciplinary letter, namely the database access violations and the founded finding and criminal charge related to the child abuse allegations. This letter was issued prior to Zarate's November 30, 2020, letter in which she engaged in protected activity when she communicated an intent to join a grievance. The evidence demonstrates that, whatever flaws there

were in the investigation process or whether Perez actually based her decision on her belief that Zarate had actually committed child abuse, the allegations related to the founded finding and criminal charges were on the table prior to Zarate's protected activity.

Zarate also points to Perez' inconsistent testimony about whether it was the existence of the founded finding that formed the basis for the decision to terminate Zarate's employment, or whether Perez actually believed the underlying allegations of child abuse and neglect and based her decision on those beliefs. In Zarate's view, Perez had concluded that the allegations were true and based her decision to terminate Zarate's employment on that conclusion.

Perez' testimony is not reliable on this point in that she went back-and-forth in her testimony regarding whether she based her decision on the existence of the founded finding and criminal charges, or whether she believed the underlying accusations of child abuse were in fact true. In the end, I find that Perez based her termination decision in part on her belief that Zarate had, in fact, committed child abuse as alleged in the founded finding and criminal charges. She said so during her testimony, and that version is consistent with her statement in the discharge letter citing: "your [Zarate's] off duty conduct which resulted in the founded finding and criminal charge, is detrimental to your work performance or the program of the agency."

However, in the end it does not make a difference in the outcome to determine the underlying question of whether Perez was substantially motivated by union animus in making her decision to terminate Zarate's employment. Even if Perez did believe that the underlying accusations of the founded finding and criminal charges were true and that belief formed part of her decision, that motivation does not demonstrate that she acted out of union animus. The key determination for this case is whether Perez was motivated by union animus, not that she was mistaken in her beliefs about the truth of the child abuse allegations. The fact that she may have been motivated by other incorrect assumptions or conclusions in making that decision does not, without something tying it in, support a finding that she acted out of animus.

Zarate points to Perez' shifting testimony on whether she based her termination decision on her belief that Zarate had actually engaged in child abuse as evidence that she was trying to cover her

discriminatory intent. She also argues that Perez did not consistently follow various policies, and treated Zarate disparately under them as proof that Perez acted out of union animus.

Providing shifting reasons for taking an action, deviating from an established policy, or engaging in disparate treatment can be facts used to support a finding that the employer's proffered reasons are pretextual or substantially motivated by union animus. *See Pasco Housing Authority, Decision 6248-A (PECB, 1998); Kennewick School District, Decision 5632-A (PECB, 1996).*

Here though, Perez' back-and-forth on whether she believed the underlying allegations of the founded finding seem more likely intended to hide the fact that she did in fact believe them, not to hide union animus. Similarly, Zarate's argument that she was treated more harshly than other employees ignores the fact that she was the first employee in Perez' chain of command to have a founded finding against her. Therefore, there was no past practice in applying policies in those circumstances, or disparate treatment.

### CONCLUSION

Based upon the record as a whole, I conclude that the complainant failed to prove, by a preponderance of the evidence, that the employer discriminated against Zarate and dismiss the complaint.

### FINDINGS OF FACT

1. The Washington State Department of Children, Youth, and Family Services (DCYF) is a public employer under RCW 41.80.005(8).
2. Silvia Zarate was an employee of the employer under RCW 41.80.005(6).
3. The Washington Federation of State Employees is an employee organization under RCW 41.80.005(7) and represents a bargaining unit of employees that included Zarate.

4. Zarate worked for DCYF for nearly 13 years until her employment was terminated on December 14, 2020. She held the position of Social Services Specialist 3 in the Child Welfare Field Operations division in the Yakima office.
5. Social Services Specialist 3 is a “covered” position in that employees holding the position must satisfy DCYF’s background check policy to remain qualified to perform the job. The position involves unsupervised access to children and families and also involves access to DCYF’s FamLink database containing confidential case management and intake data for various aspects of DCYF’s operation, including both Child Welfare and Child Protective Services.
6. Zarate is also a licensed foster parent. The foster parent licensing program is overseen by the DCYF Licensing Department of Child Protective Services. Although both are part of DCYF, Child Protective Services is administered separately from Child Welfare where Zarate was employed.
7. Dorene Perez is the Regional Administrator and Appointing Authority for the Child Welfare region that includes the Yakima office where Zarate worked. As part of the appointing authority role, she is charged with initiating investigations into alleged employee misconduct and making disciplinary decisions regarding findings of misconduct that result from those investigations. She has ultimate authority on imposing discipline, but does so with the input of various advisors, including those in DCYF Human Resources.
8. On January 23, 2020, Perez was informed by Child Protective Services that Zarate was under investigation related to allegations of child abuse and neglect in her role as a foster parent.
9. Pending the outcome of the Child Protective Services investigation, Perez placed Zarate on alternative assignment where Zarate performed primarily clerical duties and where she would not have contact with families and children.

10. The Child Protective Services investigation resulted in what is referred to as a “founded finding” against Zarate. A founded finding “means that [Child Protective Services] investigated the allegation(s) and, based on the information available, has determined that it was more likely than not that the abuse and/or neglect occurred and you [Zarate] are the person responsible for the abuse and/or neglect.”
11. Child Protective Services orally informed Zarate of the founded finding against her on July 30, 2020. However, the formal letter informing her and notifying her of her appeal rights to challenge the finding was not issued until August 24, 2020, and only after Zarate contacted DCYF Secretary Ross Hunter for assistance.
12. Zarate continued on alternative assignment while a separate workplace investigation initiated by Perez was conducted.
13. In September 2020, Zarate was summoned to appear in Yakima County court related to potential criminal charges against her regarding the child abuse allegations. Criminal charges were issued on October 6, 2020.
14. At the time Zarate’s employment was terminated by DCYF on December 14, 2020, both the founded finding and criminal charges were standing.
15. Zarate vigorously denied the child abuse allegations and appealed the founded finding and fought the criminal charges. The criminal charges were subsequently dismissed on April 16, 2021. And following the appeal, the founded finding was also overturned on June 9, 2022.
16. In Spring of 2020, while conducting a separate workplace investigation, DCYF discovered that Zarate had used her database credentials to gain unauthorized access to confidential Child Protective Services foster parent information that was unrelated to her work in Child Welfare. An investigation showed that she accessed a friend and coworker’s foster parent profile four times without a business need and accessed that same coworker’s Child



Protective Services case file 100 times without a business need. She had also accessed her own foster parent profile 164 times and her own Child Protective Services case files 24 times without a business need. This included a period of time when Zarate was under Child Protective Services investigation for the foster child abuse allegations and ceased only when Zarate's database access ended when she was placed on alternative assignment.

17. The information Zarate accessed was at least in part related to the Child Protective Services investigation into the child abuse allegations against her and could have given her inside information regarding the status of the investigation and allegations.
18. On July 31, 2020, Perez opened a workplace investigation into both the founded finding and the unauthorized database access. Workplace investigations are processed through a separate DCYF division from both Child Protective Services and Child Welfare. An investigator was assigned and issued an investigation report on October 14, 2020, that substantiated the allegations.
19. On November 2, 2020, Perez issued a notice of intent to discipline letter to Zartae. The letter included references to the two aspects of the unauthorized database access (regarding accessing her own records and for accessing those of her friend) and for the founded finding and criminal charge related to the child abuse allegations as potential reasons for taking disciplinary action.
20. A predisciplinary meeting was held November 12, 2020. During that meeting, Zarate admitted to and accepted responsibility for the unauthorized database access. However, she vigorously denied the child abuse allegations underlying the founded finding and criminal charges. She told Perez and Quincey that she was challenging the allegations and they would be overturned. She also expressed concern over Quincey's role since she had formerly been her union representative.
21. On November 17, 2020, following the predisciplinary meeting, Zarate sent a letter to Perez which stated in part that "as soon as everything gets overturned, I will be demanding

answers and reimbursement for all the damages.” She also referenced being an “advocate for better rights and protection for the families, Foster Parents, and my co-workers.”

22. Zarate sent another letter to DCYF on November 30, 2020, where she stated: “I am also letting you know that I have joined Maribel Rivera’s grievance,” “I am joining in” and that she had “no choice but to speak up and advocate for my rights and that of my fellow co-workers.” Maribel Rivera was Zarate’s friend and coworker who had been terminated on November 20, 2020, at least in part for unauthorized access to the database.
23. On December 14, 2020, Zarate’s employment was terminated. In the final notice of discharge letter, Perez cited the same conduct as in the November 2, 2020, notice of intent to discipline letter as the reasons for terminating Zarate’s employment. They included the two aspects of unauthorized database access and the founded finding and criminal charges related to the child abuse allegations that were still standing at the time. However, she added the following: “your off duty conduct which resulted in the founded finding and criminal charge, is detrimental to your work performance or the program of the agency.”
24. On April 16, 2021, approximately five months after her employment was terminated, the criminal charges against Zarate were dismissed. On June 9, 2022, about a year and a half after her employment was terminated, the founded finding against Zarate was overturned by DCYF’s Board of Appeals.
25. Zarate engaged in protected activity in her November 30, 2020, letter to Perez. She was deprived of an ascertainable right, benefit, or status when her employment was terminated. She established a causal connection with the short time frame between her engaging in protected activity and when her employment was terminated. Her employment was terminated two weeks after she communicated her intent to join a grievance.
26. DCYF terminated Zarate’s employment because she violated policy by accessing her friend and coworker’s foster parent record and Child Protective Services case information in DCYF’s database without a business need, by accessing her own foster parent record and

Child Protective Services case information in the DCYF database without a business need, and that she had a founded finding of child abuse and neglect and a related criminal charge pending at the time her employment was terminated that disqualified her from doing her job.

27. The reasons DCYF cited for terminating Zarate's employment were not pretextual, nor substantially motivated by union animus.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.80 RCW and chapter 391-45 WAC.
2. By terminating Silvia Zarate's employment as described in findings of fact 4 through 27, Washington State Department of Children, Youth, and Families did not discriminate against Zarate or violate RCW 41.80.110(1)(c).

#### ORDER

The amended complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 5th day of April, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



E. MATTHEW GREER, 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.



# RECORD OF SERVICE

ISSUED ON 04/05/2023

DECISION 13329-B - PSRA has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 133314-U-21

EMPLOYER: WASHINGTON STATE DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

REP BY: CHERYL L. WOLFE  
OFFICE OF THE ATTORNEY GENERAL  
1116 W RIVERSIDE AVE STE 100  
SPOKANE, WA 99201-1106  
cheryl.wolfe@atg.wa.gov

SARA L. WILMOT  
OFFICE OF THE ATTORNEY GENERAL  
1116 W RIVERSIDE AVE STE 100  
SPOKANE, WA 99201-1106  
sara.wilmot@atg.wa.gov

MICHAELA DOELMAN  
OFFICE OF FINANCIAL MANAGEMENT  
INSURANCE BUILDING  
PO BOX 43113  
OLYMPIA, WA 98504-3113  
labor.relations@ofm.wa.gov

PARTY 2: SILVIA ZARATE

REP BY: SILVIA ZARATE  
PO BOX 1153  
GRANGER, WA 98932  
mendozawapato@aol.com

ADA K. WONG  
AKW LAW, P.C.  
6100 219TH ST SW STE 480  
MOUNTLAKE TERRACE, WA 98043  
ada@akw-law.com

JORDAN T. WADA  
AKW LAW, P.C.  
6100 219TH ST SW STE 480  
MOUNTLAKE TERRACE, WA 98043  
jordan@akw-law.com