

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ANJELITA LONGORIA FORNARA,

Complainant,

vs.

WASHINGTON STATE DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES,

Respondent.

CASE 135103-U-22

DECISION 13647 - PSRA

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Anjelita Longoria Fornara, the complainant.

Margaret C. McLean and *Carl J. Gaul IV*, Assistant Attorneys General, Attorney General Robert K. Ferguson, for the Washington State Department of Children, Youth, and Families.

On May 18, 2022, Anjelita Longoria Fornara (complainant or Fornara) filed an unfair labor practice complaint against the Washington State Department of Children, Youth, and Families (employer or DCYF). On May 31, 2022, a preliminary ruling¹ was issued finding a cause of action. The employer filed a timely answer on June 21, 2022. A virtual hearing was held on December 19 and December 20, 2022, before the undersigned Examiner. The employer filed a timely post-hearing brief by February 10, 2023, to complete the record.²

ISSUE

The issue, as framed by the cause of action statement, involves:

¹ As of January 1, 2023, the administrative regulations administered by the Washington State Public Employment Relations Commission were revised. As part of that revision, under WAC 391-45-110, the term “preliminary ruling” was changed to “cause of action statement.”

² The complainant submitted a post-hearing brief to the undersigned Examiner by February 10, 2023, but there is no record that the brief was filed properly consistent with the requirements of WAC 391-08-120.

Employer discrimination in violation of RCW 41.80.110(1)(c) [and if so derivative interference in violation of RCW 41.80.110(1)(a)] within six months of the date the complaint was filed, by discriminating against Anjelita Longoria Fornara in retaliation for her exercise of protected activity.

The complainant has failed to carry the burden of proof demonstrating employer discrimination in violation of RCW 41.80.110(1)(c). To prove discrimination under the statute, the complainant must meet their initial burden of proof by establishing a prima facie case of discrimination. This includes demonstrating that the employee engaged in protected union activity or communicated an intent to do so; was denied an ascertainable right, benefit, or status; and that a causal connection exists between the protected activity and subsequent deprivation. Based on the evidence submitted into the record, the complainant has not satisfied the burden of proof in establishing a prima facie case. Even if this were not the case, under the burden shifting framework for a discrimination charge, the employer has successfully demonstrated a legitimate nondiscriminatory reason for its actions. There is no evidence in the record that such an explanation is pretextual or disguised to cover an underlying union animus, and as such the complainant's charge of discrimination is dismissed.

BACKGROUND

The complainant has worked in various public sector positions with the state of Washington dating back to approximately 1991. Fornara began her career with the Washington State Department of Social and Health Services (DSHS) on May 11, 2010. On June 1, 2016, Fornara moved into the position of a Child Protective Services/Family Assessment Response worker. Following the enactment of new enabling legislation in 2017, jurisdiction for the care of children and young people was transferred from the DSHS to a new executive branch agency called the Department of Children, Youth, and Families (DCYF). The DCYF assumed full operational control by July 2018. Around the time of this agency reorganization, the complainant moved to the Yakima office of the newly formed DCYF. On October 1, 2017, Fornara obtained the job classification of Social Service Specialist 3 (SSS3), which position she held at the time of this hearing.

Upon establishment of the new DCYF Yakima office, the evidence produced during the hearing suggests significant tension developed between employees in the Yakima office and their

supervisors. Several employees who worked at the DCYF Yakima office between 2017 through 2020 testified to an alleged atmosphere of intimidation, bullying, and unrealistic work expectations between management and employees. At least four employees testified to being fired from their positions in the Yakima office during this time after filing grievances or submitting complaints around workload and workplace expectations. DCYF officials confirmed that five employees in Region 2 had been terminated for cause since 2018. During this period, the DCYF was made aware of several instances of employees claiming they were being discriminated or retaliated against, which prompted investigations by the Workplace Investigation Unit (WIU) of the DCYF. No evidence was submitted into the record that these investigations substantiated any claims of inappropriate or unlawful behavior.

In July 2018, Dorene Perez was appointed as the Child Welfare Regional Administrator for Region 2, which oversees the Yakima office. On August 15, 2019, an all-staff meeting for the Yakima office was convened and led by Regional Administrator Perez. The record is sparse as to the reason for the meeting or precisely what was discussed, but at some point, Fornara spoke up and posed a question to Perez. One witness who was present at the meeting testified that Fornara's question addressed overall workload concerns at the Yakima office and whether the DCYF had plans to hire additional employees. Perez testified that she responded to Fornara's question by indicating she was not aware of the particular concern being raised. This exchange resulted in some type of verbal confrontation that culminated in Fornara allegedly forcefully throwing items into a garbage can upon leaving the meeting emotionally upset.

On October 14, 2019, Fornara was called into a meeting with her supervisor and Area Administrator, Claudia Rocha. The purpose of the meeting was for Rocha to deliver a Performance Meeting Record (PMR) to Fornara. As stated on the PMR form, its purpose is to "address performance concerns, or to document oral reprimands or instances of exceptional performance." During the meeting, Rocha informed Fornara that her behavior during the August 15, 2019, staff meeting and in a separate incident on September 5, 2019, where Fornara alleged aggressively opened an office door upon leaving a consult meeting, were inconsistent with Administrative Policy 11.21 Ethics and Employee Conduct. This policy generally details workplace behavior expectations and professionalism. Fornara strenuously objected to how her behavior was being

categorized by DCYF management and sought to have the PMR removed from her file. At a follow-up meeting with Perez several days later, Fornara was again accused of behavior inconsistent with the expectations in Policy 11.21, including raising her voice, using aggressive body language, and using a derogatory term to describe one of her supervisors. No further documented action was taken concerning the October 2019 PMR.

On April 28, 2021, Area Administrator Rocha issued a Memo of Concern to Fornara based on an April 8, 2021, email sent from Fornara to her supervisor, Skie Morales, as well as several other employees at the Yakima office. The email covered topics ranging from concerns about possible changes in practices, to statements about preferential treatment of employees, to concerns about employee turnover and an alleged lack of transparency in case assignments. The Memo of Concern specified that Fornara's email was in response to receiving guidance and feedback provided by her supervisor, but the email was written in a "sarcastic, unprofessional, accusatory and disrespectful" manner that continued a "pattern of escalating and inappropriate behavior . . ." in violation of Policy 11.21.

In subsequent months, several more exchanges between Fornara and her supervisors, including Morales, resulted in Perez initiating an administrative investigation against Fornara on September 17, 2021. The initial scope of the investigation centered on two email exchanges between Fornara and Morales, involving two separate cases. In both cases Morales sought to correct an error allegedly made by Fornara in order to provide further direction on specific cases. In response to these directives, Fornara again accused Morales and DCYF management of being "unethical," engaging in "gross mismanagement," writing "libel and slanderous information" about Fornara, and suppressing her "first amendment right." Additional allegations were later added to the investigation concerning Fornara's alleged mishandling of an urgent case matter.

Led by Investigator KC Mattingly-Nelson, the WIU interviewed Fornara on two separate occasions, with her union representative, Gus Gonzalez, in attendance. The completed investigatory report was submitted to Perez on December 8, 2021. On December 21, 2021, Perez issued a Notice of Pre-Disciplinary Meeting to Fornara indicating that the DCYF was considering disciplinary action against her as a result of the investigation. During subsequent email

communications where the DCYF sought to schedule a Loudermill hearing, Fornara clearly raised objections to the investigation and notified both DCYF management and her union that she would challenge these findings with a grievance, which Fornara directed her union to file. Fornara was disciplined as a consequence of this investigation, which she later sought to grieve with the assistance of her union, the Washington Federation of State Employees. The record does not contain any detail as to the scope of any grievance or its outcome.

In approximately January 2022, a new supervisor, Kim Hawkins, was assigned to supervise the complainant. Part of Fornara's allegation of discrimination includes the charge that she was bypassed for promotional opportunities in favor of less-qualified applicants as a consequence of being outspoken in challenging DCYF management on practices at the Yakima office. In the six months preceding the filing of this complaint, Hawkins was one of those newly promoted individuals. The record, however, demonstrates that hiring for this position was done through an open and competitive application process, with advertising for the position conducted through the state's NEOGOV job application platform. Prior to applying to and accepting this permanent position, Hawkins was working in a nonpermanent supervisor position since 2019. Fornara never applied for the position eventually awarded to Hawkins, nor is there any evidence that she applied for other promotional positions for which she was denied.

On February 15, 2022, Perez initiated a new, and separate, administrative investigation into the complainant's behavior, this time relating to allegations of violation of Policy 11.21 based on two interactions between Fornara and Hawkins over case management issues. In one of those email exchanges, the complainant referred to her former supervisor as a "liar and backstabber" and again accused agency staff and supervisors of engaging in "unethical and unprofessional" behavior. The record does not clearly detail the outcome of the investigation nor any associated disciplinary action taken by the DCYF, but Fornara testified that the investigation resulted in a "reduction of pay." Through the assistance of her union, the reduction of pay was later reduced to a lesser penalty, the details of which are not contained in the record.

Throughout these investigations and leading up to the filing of her complaint, Fornara has alleged that she was unfairly denied overtime opportunities. In the six months prior to the filing of the

complaint, evidence was submitted on three separate occasions where the complainant submitted for overtime to complete work assignments. In the first instance, on January 19, 2022, Fornara requested an unspecified number of overtime hours to close out “red cases,” and she was approved for eight hours of overtime by Supervisor Hawkins. Separately, on March 18, 2022, Fornara sought eight hours of overtime to work on four specified cases, which was approved the same day by Rocha. Finally, on March 31, 2022, Fornara again sought eight hours of overtime to work on specifically identified cases, which was approved by Rocha about an hour after the request was submitted. The record does not contain any evidence of other specific instances of overtime that were either requested by the complainant, or denied by the DCYF, during the six months prior to the filing of the complaint.

ANALYSIS

Applicable Legal Standard

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee’s exercise of rights protected by chapter 41.80 RCW. RCW 41.80.110(1)(c); *University of Washington*, Decision 11091-A (PSRA, 2012); *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in a discrimination case. WAC 391-45-270(1)(a). To prove discrimination, the complainant must first establish a prima facie case by showing that:

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 protected activity and the employer’s action.

City of Vancouver v. Public Employment Relations Commission, 180 Wn. App. 333, 348–349 (2014); *Educational Service District 114*, Decision 4361-A.

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. *Clark County*, Decision 9127-A (PECB, 2007). Circumstantial evidence consists of proof of facts or circumstances that according to the common experience give rise to a reasonable inference of the truth of the fact sought to be proved. *See Seattle Public Health Hospital*, Decision 1911-C (PECB, 1984).

In response to a complainant's prima facie case of discrimination, the respondent need only articulate its nondiscriminatory reasons for acting in such a manner. The respondent does not bear the burden of proof to establish those reasons. *Port of Tacoma*, Decision 4626-A (PECB, 1995). Instead, the burden remains on the complainant to prove either that the employer's reasons were pretextual or that union animus was a substantial motivating factor behind the employer's actions. *Port of Tacoma*, Decision 4626-A.

To determine whether activity is protected under the statute, the Commission first looks at whether, on its face, the activity was taken on behalf of the union. *University of Washington*, Decision 11199-A (PSRA, 2013). Protected activity has been found to include actions like filing a grievance or unfair labor practice complaint; investigating a potential grievance; testifying at a hearing; engaging in union organizing activity; and serving as an elected officer of a union or participating in collective bargaining. *Mukilteo School District*, Decision 5899-A (PECB, 1997); *Washington State Patrol*, Decision 11863-A (PECB, 2014); *Grant County Public Hospital District I*, Decision 6673-A (PECB, 1999); *Asotin County Housing Authority*, Decision 2471-A (PECB, 1987); *Oroville School District*, Decision 6209-A (PECB, 1998). Activity unrelated to conduct covered by one of the collective bargaining statutes is unprotected. *Seattle School District*, Decision 9356-B (EDUC, 2010).

Application of Standard

To prove a prima facie case of discrimination, the complainant must first demonstrate that they were engaged in protected union activity or at least communicated an intent to be so engaged. Unlike the National Labor Relations Act, the State Collective Bargaining Law (chapter 41.80 RCW) is similar to other public sector collective bargaining statutes in Washington

State in that it does not contain a concerted activities clause. The complainant's case is primarily focused on the premise that she tirelessly advocated for employees at the DCYF Yakima office who endured harassment, discrimination, and retaliation by Region 2 management. The complainant believes that advocacy resulted in a series of open and heated disputes with DCYF management that subjected her to disciplinary action and other retaliatory conduct. While there is an overall lack of proof to support such charges, it is irrelevant to this proceeding because such "concerted activities," even if proven, do not equate to protected activity under chapter 41.80 RCW. Likewise, actions and statuses protected under other statutory schemes, such as the Washington Law Against Discrimination, are outside of agency jurisdiction. As noted previously by the Commission, activity unrelated to conduct covered by the state collective bargaining laws or activity not taken on behalf of unions is not considered "protected activity." Therefore, the complainant's allegations, the bulk of which center on her actions of workplace advocacy or being subject to racial or ethnic discrimination, cannot clear the burden of the prima facie case of discrimination. They do not, by definition, constitute protected activity as the term is understood under chapter 41.80 RCW.

Nevertheless, a bare minimum of evidence supports the fact that the complainant did communicate an intent to grieve the discipline imposed (or contemplated) against her during the six-month period leading up to the filing of this complaint. Following the disciplinary investigation against the complainant in December 2021, the DCYF did move forward with an effort to impose discipline against Fornara. In a series of email exchanges in early January 2022, Fornara made clear to DCYF officials that she strenuously objected to the investigatory findings and intended to grieve any discipline. In her January 7, 2022, email to Perez, Gonzalez, and others, Fornara directed her union to file a grievance prior to the final disciplinary decision being made. The act of notifying the employer of an employee's intent to grieve disciplinary action constitutes protected activity, of which the DCYF was made aware.

The complainant's prima facie case, however, breaks down on the second element, which requires proof that she was deprived of some ascertainable right, benefit, or status. During the six months leading up to the filing of the complaint, the DCYF conducted or concluded two separate disciplinary investigations against Fornara. The investigation completed in December 2021

resulted in the DCYF seeking to impose some type of disciplinary action against Fornara; however, the record does not contain any evidence as to the outcome of that process. Similarly, the second investigation that was initiated in February 2022 resulted in some level of discipline being imposed. But aside from Fornara's testimony that she received a "reduction of pay," the details are likewise unclear as to investigation and final disposition of the matter, which was grieved by her union and the penalty was reduced to some unspecified amount. The complainant carries both the burden of proof and persuasion on this topic, and the minimal proof on the topic of deprivation is not sufficient to carry either burden. The complainant's lone statement during her testimony that she received a "reduction of pay," which was later reduced in some manner, in the absence of additional testimonial or documentary evidence is not sufficient to prove any deprivation actually occurred.

Notwithstanding the lack of evidence of any deprivation, the lack of a causal connection between the alleged deprivation and the protected activity is, ultimately, fatal to the complainant's prima facie case. Over the course of several years, DCYF management sought to correct a pattern of behavior by the complainant that it believed ran contrary to Policy 11.21, all of which occurred before any expression by the complainant to engage in protected activity, such as the filing of a grievance. The timing of events is critical in assessing the question of causality because central to this concept is the idea that the cause (the exercise of protected activity) *precedes* the effect (taking disciplinary action). In this case, for a couple years before the investigations in late 2021 and early 2022, the DCYF engaged in an escalating effort to correct the same behaviors that ultimately led to some level of discipline being imposed against Fornara. In other words, before Fornara ever expressed an intent to engage in protected activity, the DCYF had initiated its efforts to correct her behavior and the alleged violations of Policy 11.21. The cart was, indeed, before the proverbial horse, and in this situation that undermines any causal connection.

While the complainant's evidence fails to establish a prima facie case of discrimination, it is useful to still examine the employer's stated rationale for disciplinary actions taken against Fornara. As stated above, going back over two years prior to the filing of this complaint, the DCYF had undertaken a deliberate and specific set of escalating steps to correct what it believed were repeated violations of Policy 11.21 by Fornara. Those efforts included emails and meetings with Fornara, a

PMR, and a Memo of Concern. Each effort, whether individually or in combination, was a non-disciplinary attempt by DCYF management to change Fornara's behavior in the workplace and force compliance with Policy 11.21. Those baseline experiences helped establish a nondiscriminatory reason behind the disciplinary acts that ultimately were initiated against Fornara, in that they represented progressive disciplinary efforts on the part of the DCYF to garner Fornara's adherence to Policy 11.21 and correct her behavior. During an approximate two-year period following the Memo of Concern, no performance issues with Fornara were documented and, in turn, no corrective or disciplinary actions against Fornara were taken by the DCYF. This supports the conclusion that the employer's motive was to correct behavior that arguably violated Policy 11.21 rather than utilizing it as a cover to inhibit otherwise protected activity engaged in by Fornara.

Nothing in the record remotely suggests that this nondiscriminatory explanation asserted by the DCYF was a pretext or otherwise designed to cover up an underlying union animus. To the contrary, the record demonstrates a long pattern of behavior by Fornara that the DCYF considered to run afoul of Policy 11.21 based on the tone, tenor, and content of her communications with other DCYF administrators, in particular Fornara's supervisors and other administrators overseeing the Yakima office. The employer has articulated a legitimate business reason for taking disciplinary action against Fornara. In turn, Fornara has failed to elicit any evidence that these efforts by the DCYF were simply a pretext to hide an underlying animus for the union or against those individuals enforcing the rights of the union. It is, ultimately, the complainant's burden to bear in offering such proof, and the record does not offer sufficient evidence to clear this bar.

CONCLUSION

For these reasons articulated above, the complainant has failed to establish a prima facie case of discrimination through the lack of proof of any deprivation to a protected right or a causal connection between the alleged deprivation and the exercise of protected activity. Even if the complainant could establish a prima facie case of discrimination, of which the evidence in this case is lacking, the employer has successfully proven a legitimate, nondiscriminatory reason for any disciplinary efforts taken against Fornara that were at issue in this case. There is no evidence

to support any conclusion that such rationale is a mere pretext for any underlying animus toward the union. As such, the discrimination charge necessarily fails and the complaint must be dismissed.

FINDINGS OF FACT

1. The Washington State Department of Children, Youth, and Families (DCYF) is a public employer as defined by RCW 41.80.005(8).
2. Anjelita Longoria Fornara is a public employee as defined by RCW 41.80.005(6).
3. The complainant, Anjelita Longoria Fornara, is employed by Washington State Department of Children, Youth, and Families as a Social Service Specialist 3 and assigned to the Yakima field office.
4. Historically, the jurisdiction for what is now the DCYF existed within the Washington State Department of Social and Health Services (DSHS). The complainant began her career with the DSHS on May 11, 2010. Following the enactment of new enabling legislation in 2017, jurisdiction for the care of children and young people was transferred from the DSHS to the DCYF. In approximately 2018, Fornara moved to the Yakima office of the newly formed DCYF.
5. Upon establishment of the new DCYF Yakima office, there was significant tension between some employees in the Yakima office and their supervisors. Several employees who worked at the DCYF Yakima office between 2017 through 2020 testified to an alleged atmosphere of intimidation, bullying, and unrealistic work expectations between management and employees. At least four employees testified to being fired from their positions in the Yakima office during this time after filing grievances or submitting complaints around workload and workplace expectations. DCYF officials confirmed that five employees in Region 2 had been terminated for cause since 2018. During this period, the DCYF was made aware of several instances of employees claiming they were being discriminated or retaliated against, which prompted investigations by the Workplace

Investigation Unit of the DCYF. There is no evidence indicating whether these investigations substantiated any claims of inappropriate or unlawful behavior.

6. In July 2018, Dorene Perez was appointed as the Child Welfare Regional Administrator for Region 2, which oversees the Yakima office. On August 15, 2019, an all-staff meeting for the Yakima office was convened and led by Perez. The record is sparse as to the reason for the meeting or precisely what was discussed, but at some point, Fornara spoke up and posed a question to Perez. One witness who was present at the meeting testified that Fornara's question addressed overall workload concerns at the Yakima office and whether the DCYF had plans to hire additional employees. Perez testified that she responded to Fornara's question by indicating she was not aware of the particular concern being raised. This exchange resulted in some type of verbal confrontation that culminated in Fornara allegedly forcefully throwing items into a garbage can upon leaving the meeting emotionally upset.
7. On October 14, 2019, Fornara was called into a meeting with her supervisor and Area Administrator, Claudia Rocha. The purpose of the meeting was for Rocha to deliver a Performance Meeting Record (PMR) to Fornara. As stated on the PMR form, its purpose is to "address performance concerns, or to document oral reprimands or instances of exceptional performance." During the meeting, Rocha informed Fornara that her behavior during the August 15, 2019, staff meeting and in a separate incident on September 5, 2019, where Fornara alleged aggressively opened an office door upon leaving a consult meeting, were inconsistent with Administrative Policy 11.21 Ethics and Employee Conduct. This policy generally details workplace behavior expectations and professionalism. Fornara strenuously objected to how her behavior was being categorized by DCYF management and sought to have the PMR removed from her file. At a follow-up meeting with Perez several days later, Fornara was again accused of behavior inconsistent with the expectations in Policy 11.21, including raising her voice, using aggressive body language, and using a derogatory term to describe one of her supervisors. No further documented action was taken concerning the October 2019 PMR.

8. On April 28, 2021, Rocha issued a Memo of Concern to Fornara based on an April 8, 2021, email sent from Fornara to her supervisor, Skie Morales, as well as several other employees at the Yakima office. The email covered topics ranging from concerns about possible changes in practices, to statements about preferential treatment of employees, to concerns about employee turnover and an alleged lack of transparency in case assignments. The Memo of Concern specified that Fornara's email was in response to receiving guidance and feedback provided by her supervisor, but the email was written in a "sarcastic, unprofessional, accusatory and disrespectful" manner that continued a "pattern of escalating and inappropriate behavior . . ." in violation of Policy 11.21.
9. Subsequent to the April 28, 2021, Memo of Concern, several more exchanges between Fornara and her supervisors, including Morales, resulted in Perez initiating an administrative investigation against Fornara on September 17, 2021. The initial scope of the investigation centered on two email exchanges between Fornara and Morales, involving two separate cases. In both cases Morales sought to correct an error allegedly made by Fornara in order to provide further direction on specific cases. In response to these directives, Fornara again accused Morales and DCYF management of being "unethical," engaging in "gross mismanagement," writing "libel and slanderous information" about Fornara, and suppressing her "first amendment right." Additional allegations were later added to the investigation concerning Fornara's alleged mishandling of an urgent case matter.
10. Led by Investigator KC Mattingly-Nelson, the DCYF's Workplace Investigation Unit interviewed Fornara on two separate occasions with her union representative, Gus Gonzalez, in attendance. The completed investigatory report was submitted to Perez on December 8, 2021. On December 21, 2021, Perez issued a Notice of Pre-Disciplinary Meeting to Fornara indicating that the DCYF was considering disciplinary action against her as a result of the investigation.
11. Following the December 21, 2021, notice of pre-discipline, DCYF administrators, Fornara, and union officials discussed scheduling a Loudermill hearing. Within those email communications, Fornara clearly raised objections to the investigation and notified both

DCYF management and her union that she would challenge these findings with a grievance, which Fornara directed her union to file. Fornara was disciplined as a consequence of this investigation, and she later sought to grieve with the assistance of her union, the Washington Federation of State Employees. The record does not contain any detail as to the scope of any grievance or its outcome.

12. In approximately January 2022, a new supervisor, Kim Hawkins, was assigned to supervise the complainant. Prior to being assigned as Fornara's supervisor, Hawkins had recently been promoted into the position. The hiring of Hawkins into the supervisor position by the DCYF was done through an open and competitive application process, with advertising for the position conducted through the state's NEOGOV job application platform. Hawkins had previously been hired into a non-permanent supervisor position in 2019 and had been performing in that role for a couple of years when she applied for, and accepted, the permanent position. The complainant never applied for the position eventually awarded to Hawkins nor is there any evidence that the complainant applied for other promotional positions for which she was denied.
13. On February 15, 2022, Perez initiated a new, and separate, administrative investigation into the complainant's behavior, this time relating to allegations of violation of Policy 11.21 based on two interactions between the complainant and Hawkins over case management issues. In one email exchange, the complainant referred to her former supervisor as a "liar and backstabber" and again accused agency staff and supervisors of engaging in "unethical and unprofessional" behavior. The record does not clearly detail the outcome of the investigation nor any associated disciplinary action taken by the DCYF, but the complainant testified that the investigation resulted in a "reduction of pay." Through the assistance of the complainant's union, the reduction of pay was later reduced to a lesser penalty, the details of which are not contained in the record.
14. In the six months prior to the filing of the complaint, evidence was submitted on three separate occasions where the complainant submitted for overtime to complete work assignments. In the first instance, on January 19, 2022, Fornara requested an unspecified number of overtime hours to close out "red cases," and she was approved for eight hours

of overtime by Hawkins. Separately, on March 18, 2022, Fornara sought eight hours of overtime to work on four specified cases, which was approved the same day by Rocha. Finally, on March 31, 2022, Fornara again sought eight hours of overtime to work on specifically identified cases, which was approved by Rocha about an hour after the request was submitted. The record does not contain any evidence of other specific instances of overtime that were either requested by the complainant, or denied by the DCYF, during the six months prior to the filing of the complaint.

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. As described in findings of fact 3–14, the employer did not discriminate in violation of RCW 41.80.110(1)(c), nor did it commit a derivative interference in violation of RCW 41.80.110(1)(a), within six months of the date the complaint was filed.

ORDER

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

ISSUED at Olympia, Washington, this 3rd day of April, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CHRISTOPHER J. CASILLAS, 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 04/03/2023

DECISION 13647 - PSRA has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 135103-U-22

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

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