

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ANJELITA LONGORIA FORNARA,

Complainant,

vs.

WASHINGTON STATE DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES,

Respondent.

CASE 136327-U-23

DECISION 13659 - PSRA

CAUSE OF ACTION STATEMENT
AND ORDER OF PARTIAL
DISMISSAL

Anjelita Longoria Fornara, Complainant.

Kate S. Worthington and Carl J. Gaul IV, Assistant Attorneys General, Attorney General Robert W. Ferguson for the Washington State Department of Children, Youth, and Families.

On March 22, 2023, Anjelita Longoria Fornara (complainant) filed an unfair labor practice complaint against the Washington State Department of Children, Youth, and Families (employer). The complaint was reviewed under WAC 391-45-110.¹ A deficiency notice issued on April 5, 2023, notified Fornara that a cause of action could not be found at that time for the *Weingarten* allegation in her complaint. Fornara was given a period of 21 days in which to file and serve an amended complaint or face dismissal of the deficient *Weingarten* allegation.

On April 13, 2023, April 14, 2023, and April 17, 2023, Fornara filed additional documents that attempted to support her complaint. However, Fornara did not file an amended complaint that included additional necessary facts to support her *Weingarten* allegation. Fornara's *Weingarten*

¹ At this stage of the proceedings, all of the facts alleged in the complaint or amended 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.

allegation is dismissed for failure to state a cause of action. A cause of action statement is issued for other allegations of the original complaint.

BACKGROUND

Fornara works at the Washington State Department of Children, Youth, and Families (employer) as a Social Service Specialist 3. Her position is represented by the Washington Federation of State Employees (union). The employer and union are parties to a collective bargaining agreement that expires on June 30, 2023. On May 18, 2022, Fornara filed an unfair labor practice complaint against the employer. Case 135103-U-22. That complaint is currently pending before an agency examiner.

Paragraphs 65 through 67 of Fornara's instant complaint alleges the employer violated Fornara's *Weingarten* rights during meetings that occurred on April 8, 2021, and April 29, 2021. According to the original complaint, the employer used deceptive tactics to exclude the union from these meetings where the employer transformed minor issues into disciplinary matters. The original complaint does not contain any facts demonstrating that Fornara requested union representation during these meetings.

In response to the April 5, 2023, deficiency notice, Fornara submitted additional documents concerning her allegations. The document filed on April 13, 2023, is a letter addressed to the union and employer. Nothing in this document concerns the alleged *Weingarten* violations and nothing in this document cures the defect outlined in the April 5, 2023, deficiency notice. The document filed on April 14, 2023, is addressed to the union and is a request for the union to file an arbitration on Fornara's behalf. Nothing in this document concerns the alleged *Weingarten* violations and nothing in this document cures the defect outlined in the April 5, 2023, deficiency notice. The April 17, 2023, document is a letter from the employer to Fornara notifying her that the employer is conducting an investigation regarding allegations of misconduct and that Fornara has been reassigned to work from her residence with full pay and entitlements pending the outcome of the investigation.

ANALYSIS*Applicable Legal Standards*

There is a six-month statute of limitations for unfair labor practice complaints. RCW 41.80.120(1) governs the time for filing complaints:

The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission or in superior court. This power shall not be affected or impaired by any means of adjustment, mediation, or conciliation in labor disputes that have been or may hereafter be established by law.

The Commission has ruled multiple times on statute of limitations questions involving unfair labor practice complaints. The six-month statute of limitations begins to run when the complainant knows, or should have known, of the violation. *State – Corrections*, Decision 11025 (PSRA, 2011) (citing *City of Bremerton*, Decision 7739-A (PECB, 2003)).

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

There are four elements necessary for *Weingarten* rights to be applicable:

1. The right to representation attaches only where the employer compels the employee to attend an investigatory meeting.
2. A significant purpose of the interview must be (or becomes) to obtain facts related to a disciplinary action.

3. The employee must reasonably believe potential discipline might result from the information obtained during the interview. *Mason County*, Decision 7048 (PECB, 2000).
4. The employee must request the presence of a union representative.

State – Washington State Patrol, Decision 4040 (PECB, 1992); *Seattle School District*, Decision 10066-B (PECB, 2010).

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*; *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.

Application of Standards

Fornara’s complaint asserts that the employer violated Fornara’s *Weingarten* rights during the April 8, 2021, and April 29, 2021, meetings. Fornara filed her complaint on March 22, 2023. Application of the six-month statute of limitations demonstrates that the only timely events to this complaint would be those that occurred on or after September 22, 2022, and therefore this allegation appears to be untimely. Additionally, while Fornara asserts the employer used descriptive tactics to exclude the union from these meetings, none of the facts in the complaint or subsequent filings demonstrate that Fornara actually requested union representation. Because the allegation of the *Weingarten* violation is not timely and substantively defective, the complaint must be dismissed.

ORDER

1. Assuming all of the facts alleged to be true and provable, the discrimination for filing an unfair labor practice allegation of the complaint states a cause of action, summarized as follows:

Employer discrimination in violation of RCW 41.80.110(1)(d) [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 retaliating against Anjelita Longoria Fornara for filing an unfair labor practice complaint.

This allegation will be the subject of further proceedings under chapter 391-45 WAC.

2. The respondent shall file and serve an answer to the allegation listed in paragraph 1 of this order within 21 days following the date of this order. The answer shall
 - (a) specifically admit, deny, or explain each fact alleged in the complaint, except if the 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 and served in accordance with WAC 391-08-120. Except for good cause shown, if the respondent fails to file a timely answer or to file an answer that specifically denies or explains facts alleged in the complaint, the respondent will be deemed to have admitted and waived its right to a hearing on those facts. WAC 391-45-210.

3. The allegation of the complaint concerning the *Weingarten* violation is DISMISSED for timeliness and failure to state a cause of action.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION


DARIO DE LA ROSA, Unfair Labor Practice Administrator

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.



RECORD OF SERVICE

ISSUED ON 05/03/2023

DECISION 13659 - 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 136327-U-23

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