Washington State Department of Children, Youth, and Families (Washington Federation of State Employees), Decision 13774 (PSRA, 2024)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES Employer.	
ANJELITA LONGORIA FORNARA, Complainant, vs. WASHINGTON FEDERATION OF STATE EMPLOYEES, Respondent.	CASE 136580-U-23c DECISION 13774 – PSRA ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Anjelita Longoria Fornara, the complainant.

Edward Earl Younglove III, Attorney, Younglove & Coker, P.L.L.C., for the Washington Federation of State Employees.

On August 30, 2022,[1] Anjelita Longoria Fornara (complainant or Fornara) filed an unfair labor practice (ULP) complaint against the Washington Federation of State Employees (respondent,

[1] This complaint was originally docketed with the agency under case 135763-U-22. Filings after 5:00 p.m. are considered filed on the next business day. WAC 391-08-120(5). Fornara filed this complaint at 6:04 p.m. on August 29, 2022, and at 7:04 p.m., Fornara sent another email to filing@perc.wa.gov, mcc@wfse.org, and natalie.green@dcyf.wa.gov and wrote, "I'm rescinding the PERC Complaint again due to not describing the remedies requested to ameliorate the ULP." Then at 8:13 p.m., Fornara addressed another email to the same contacts and explained that, while she could not access or send the WFSE and DCYF 2021-2023 CBA, it was on file with the Office of Financial Management. The Examiner notes that the Unfair Labor Practice Administrator accepted the August 30, 2022, filing date for the initial complaint. Further, the Examiner accepts the August 30, 2022, filing date to consider the case in the light most favorable to the party responding to the motion for summary judgment; any timeliness issues addressed herein are not impacted by adopting the August 30, 2022, filing date rather than the September 2, 2022, filing date of the first amended complaint.

WFSE, or union). The case was docketed as case 135763-U-22. On September 2, 2022,[2] Fornara filed an amended unfair labor practice complaint against the WFSE. These initial complaints alleged that the union discriminated by retaliating against her for filing an unfair labor practice complaint against the American Federation of Labor (AFL) – Office and Professional Employees International Union – Local 8[3] (AFL-CIO, OPEIU-8) in 2016 and that it interfered with her collective bargaining rights by failing to file her grievances to arbitration and not responding to her "public disclosure request." The complaints were reviewed under WAC 391-45-110. A partial deficiency notice issued on October 11, 2022, notified the complainant that a cause of action could not be found at that time for two of the three allegations asserted in the complaint. The partial deficiency notice advised the complainant that if she failed to file an amended complaint within the 21-day period, the deficient allegations would be dismissed, and a cause of action statement would be issued for the allegation that the union interfered with the complainant's collective bargaining rights under chapter 41.80 RCW by failing to respond to her information request.

On November 1 and 7, 2022, the complainant filed second and third amended ULP complaints, respectively, under case 135763-U-22. The ULP Administrator issued a cause of action statement[4] on November 30, 2022. Based on a routine agency audit of the ULP case, the Administrator subsequently issued an amended cause of action statement on December 15, 2022. The respondent filed a timely answer to the amended cause of action statement on December 28, 2022. Due to the

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[2] The first amended complaint was received after 5:00 p.m. on September 1, 2022, and therefore was docketed as filed on September 2, 2022. *See also footnote 1*.

[3] *The Stand* reported that OPEIU Local 23 merged with OPEIU Local 8 in 2015. Although the complainant references both Local 23 and Local 8, subsequent references in this decision will reflect OPEIU Local 8, as the ULP complaint filed against OPEIU that the complainant references was in 2016, after the date of that merger. David Groves, *Tacoma-Based OPEIU 23 Merges into 6,000-Member OPEIU 8*, The STAND (June 8, 2015), https://www.thestand.org/2015/06/its-official-tacomas-opeiu-23-merges-into-6000-member-opeiu-8/, visited on January 15, 2024.

[4] At the time the November 30, 2022, document was issued, this document type was referred to as a "preliminary ruling" under WAC 391-45-110, which was subsequently amended, changing the title of this document type to a "cause of action statement."

lengthy procedural history of this case, the universe of cause of action statements will be detailed herein along with other allegations ultimately consolidated under case 136580-U-23c.

On March 22, 2023, Fornara filed an unfair labor practice complaint against both the Washington State Department of Children, Youth, and Families (DCYF or employer) and the union. The undersigned was assigned to the case against the union, and a separate Examiner was assigned to the case against the employer. The case against the employer was docketed as 136327-U-23, and the complaint against the union was docketed with the agency under case 136328-U-23. On April 3, 2023, an Unfair Labor Practice Administrator issued a cause of action statement finding that one allegation, case 136328-U-23 against the union, could proceed. On April 12, 2023, the respondent filed a timely answer. Case 136328-U-23 and case 135763-U-22 were consolidated on May 5, 2023, and the allegation from the April 3, 2023, cause of action statement was integrated with those found in the December 15, 2022, amended cause of action statement under a new case, 136580-U-23c.

On May 9, 2023, the complainant filed an amended complaint seeking reconsideration of the December 15, 2022, amended cause of action statement pursuant to WAC 391-45-110(b), in essence requesting that the November 30, 2022, cause of action statement originally issued for case 135763-U-22 be reinstated. On August 17, 2023, the Administrator granted the complainant's request for review and issued a second amended cause of action statement allowing for three causes of action to proceed for further processing under case 135763-U-22.[5]

On July 3, 2023, the respondent filed a request to dismiss the consolidated complaints based on the parties' May 26, 2023, settlement agreement, which was reached with the assistance of an agency mediator. On July 13, 2023, the undersigned denied the respondent's motion to dismiss the consolidated ULP complaints.

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[5] Footnote 1 of the August 17, 2023, second amended cause of action statement specified that the document only concerned the allegations originally filed under case 135763-U-22. It also directed the respondent to direct any request to amend its answer to the undersigned for consideration.

On August 23, 2023, the respondent filed a motion to amend its answer based on the second amended cause of action statement issued on August 17, 2023. The undersigned offered the complainant an opportunity to respond to the motion, and she did not raise any objections. On September 5, 2023, the respondent filed a timely amended answer.

On September 27, 2023, the respondent filed a timely motion for summary judgment under WAC 391-08-155. The complainant filed several responses to the respondent's motion, with the last timely response for consideration filed on October 17, 2023.[6] The respondent filed a timely reply to the complainant's responses on October 18, 2023.

ISSUES

1. Are there genuine issues of material fact in dispute that would prevent judgment in this case?

2. Did the union interfere with Fornara's collective bargaining rights in violation of RCW 41.80.110(2)(a) within six months of the date the complaint was filed by breaching its duty of representation owed to her by

    (a) failing to advance to arbitration employee grievances filed by Fornara; [7] or,

    (b) failing to respond to Fornara's July 19, 2022, information request?[8]

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[6] On September 27, 2023, the undersigned provided a hyperlink to WAC 391-08-155 to the parties and explained the timeframes articulated under the rule. The undersigned also advised, "Unless requested, no further briefing or responses will be required." The undersigned did not solicit further briefing or responses after this correspondence. The complainant submitted an additional response to the motion on October 23, 2023, which is not included in the consideration of the motion for summary judgment or this order.

[7] This allegation is based on the complainant's unfair labor practice complaint filed on August 30, 2022. While it was originally deemed deficient in the October 11, 2022, partial deficiency notice, the facts ultimately pled in the second and third amended complaints relate back to this allegation from the original complaint. *See City of Orting*, Decision 7959-A (PECB, 2003)

[8] This allegation is based on the complainant's unfair labor practice complaint filed on August 30, 2022.

3. Did the union discriminate against Fornara in violation of RCW 41.80.110(2)(c) within six months of the date the complaint was filed[9] by retaliating against her for filing an unfair labor practice complaint under the Public Employees Collective Bargaining Act, chapter 41.56 RCW?

4. Did the union discriminate against Fornara in violation of RCW 41.80.110(2)(c) [and if so derivative interference in violation of RCW 41.80.110(2)(a)] within six months of the date the complaint was filed, by retaliating against Fornara for filing an unfair labor practice complaint? [10]

The union's motion is granted as there are no issues of material fact in dispute that would prevent judgment. The union did not interfere with Fornara's collective bargaining rights by failing to advance grievances to arbitration, nor by failing to respond to Fornara's July 19, 2022, information request. The union also did not discriminate by retaliating against Fornara for filing a ULP complaint under chapter 41.56 RCW or under any other statute over which this agency has jurisdiction.

BACKGROUND

Fornara's position was "Social Service Specialist 3" with the DCYF at the time of her unfair labor practice complaints. [11] Fornara began working for the employer in 2010, was employed by Thurston County in the interim, and returned to the employer in 2016. She started her most recent position with the employer in 2017. In 2021, DCYF issued a memo of concern to Fornara. On January 4, 2022, Fornara sent a letter to both DCYF and the WFSE to inform them that she would

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9 This allegation is based on the complainant's unfair labor practice complaint filed on August 30, 2022. *See footnote 7.*

10 This allegation is based on the complainant's unfair labor practice complaint filed on March 22, 2023.

11 Jurisdiction for the care of children and young people was transferred from the Washington State Department of Social and Health Services (DSHS) to DCYF in2017. *See www.dcyf.gov*, visited on January 12, 2024.

be filing a ULP complaint against both entities. At the time of the complaints, the employer and union were parties to a collective bargaining agreement that expired on June 30, 2023.

The March 2022 Grievance

The complainant sought the assistance of the union to file a grievance over the employer's issuance of a Positive and Constructive Meeting, and a notice of intent to discipline with subsequent additional allegations dating from April 19, 2021, through February 16, 2022. In addition, the employer issued disciplinary action to the complainant on February 11, 2022. On March 15, 2022, Union Representative Gus Gonzalez assisted the complainant in drafting a grievance for disciplinary action. The grievance was presented to the local grievance committee, which determined that the grievance lacked merit. The complainant was afforded the opportunity to appear in person to support her grievance to the committee but chose not to do so. The union advised the complainant of the committee's findings on March 17, 2022, and provided her with the union's internal grievance policy. The complainant did not file a timely internal union appeal. The complainant responded on April 4, 2022, to the committee's grievance denial with a lengthy email that included various allegations against the union and employer.

Another union representative, Tawny Brown, followed up on the complainant's April 4, 2022, email on April 8, 2022, by advising Fornara that she was past the internal union appeal time and offering her the opportunity to meet during a work break "to take a full in-depth review of [her] concerns."

The June 2022 Public Disclosure Request

On June 28, 2022, the complainant emailed the WFSE's Member Connection Center and requested "the number of grievance requests submitted against DCYF in Region 2 by WFSE from 2016 to the present." The subject line of the email is "Public Disclosure Request." Several of the complainant's filings reference the WFSE's alleged failure to respond to her public disclosure request. While the first amended complaint references the date of this request as July 19, 2022, a review of over 2000 documents filed by the complainant indicates that the "public disclosure request" to the WFSE for the number of grievance requests submitted against DCYF in Region 2

from 2016 to the date of the request was actually June 28, 2022. The Examiner could not locate a July 19, 2022, request made by Fornara seeking information from the union.

The July 2022 Grievance

On or around June 2, 2022, the employer issued disciplinary action against the complainant. As a result, the employer reduced the complainant's pay by two pay steps for a one-month period effective July 1, 2022, and directed her to attend four trainings; Fornara completed one of those trainings in July of 2022.

Brown assisted Fornara in filing another grievance on or around July 21, 2022, regarding the June 2, 2022, reduction-in-pay discipline. Fornara was represented by Brown through the grievance process, including at the Step 3 hearing on October 14, 2022. After that meeting, the employer issued its Step 3 response on October 28, 2022, wherein the original one-month reduction-in-pay was reduced to a written reprimand and ordered backpay issued to Fornara.[12] However, the employer maintained its original directive that required Fornara to attend the remaining three training courses during "protected" work time.

Fornara was not satisfied with the employer's amended discipline after the Step 3 hearing and disagreed that she should have to attend the three trainings. Brown assisted Fornara in preparing documentation to present to the union's internal grievance committee and joined Fornara before the committee to request that the grievance be moved to arbitration under the parties' collective bargaining agreement. On November 18, 2022, the committee denied the request to move the grievance to arbitration, finding that the employer met its burden of just cause under the CBA to impose the amended disciplinary action.

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[12] Filings submitted by the complainant indicate that the employer offered to reduce the reduction-in-pay discipline to a letter of reprimand (with mandatory training) after the Step 2 grievance hearing. The employer's "official" unilateral reduction in the discipline, however, was not amended until after the Step 3 hearing.

ANALYSIS

Applicable Legal Standards

Summary Judgment

Summary judgment is properly granted if there are no material issues of fact and the moving party is entitled to judgment as a matter of law. *Spokane County*, Decision 13510-B (PECB, 2022) (citing *Washington Federation of State Employees v. State*, 127 Wn.2d 544, 551 (1995)); WAC 10-08-135. A material fact is one upon which the outcome of the litigation depends. *Id.* (citing *Clements v. Travelers Indemnity Co.*, 121 Wn.2d 243, 249 (1993)). The trier of fact must consider the facts submitted and all reasonable inferences from those facts in the light most favorable to the nonmoving party. *Id.* The motion should be granted if, from all the evidence, a reasonable person could reach but one conclusion. *Id.*

The party moving for summary judgment has the burden of demonstrating the absence of any genuine issue as to a material fact. "A summary judgment is only appropriate where the party responding to the motion cannot or does not deny any material fact alleged by the party making the motion . . . . Entry of a summary judgment accelerates the decision-making process by dispensing with a hearing where none is needed." *Pierce County*, Decision 7018-A (PECB, 2001) (citing *City of Vancouver*, Decision 7013 (PECB, 2000)). Pleadings and briefs can be sufficient to determine if there is a genuine issue of material fact. *Pierce County*, Decision 7018-A (citing *City of Seattle*, Decision 4687-A (PECB, 1996)). When the moving party shows that there are no genuine issues as to any material fact, the nonmoving party bears a responsibility to present evidence demonstrating that there are material facts in dispute. *Washington State Liquor and Cannabis Board (Washington Federation of State Employees)*, Decision 13333, *aff'd*, Decision 13333-A (citing *City of Seattle (Seattle Police Management Association)*, Decision 12091 (PECB, 2014)). The Commission applies the same standards in ruling on motions for summary judgment as do Washington courts. *Id.* (citing *State – General Administration*, Decision 8087-B, PSRA, 2004).

Consistent with Civil Rule 56, if the nonmoving party fails to do so, summary judgment may then be appropriate. *Id.*; *Atherton Condominium Apartment-Owners Association Board of Directors v. Blume Development Co.*, 115 Wn.2d 506 (1990). Civil Rule 56(e) specifically states:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of a pleading, but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Pleadings and briefs can be sufficient to determine if there is a genuine issue of material fact. *Pierce County*, Decision 7018-A (citing *City of Seattle*, Decision 4687-A).

The Commission does not grant summary judgment motions lightly since doing so involves making a final determination without the benefit of a hearing. *City of Orting*, Decision 7959-A (PECB, 2003) (citing *Port of Seattle*, Decision 7000 (PECB, 2000)).

Statute of Limitations

"[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 . . ." RCW 41.80.120(1). A cause of action accrues, and the statute of limitations begins to run at the earliest point in time that a complaint concerning the alleged wrong could be filed. *Municipality of Metropolitan Seattle (METRO)*, Decision 1356-A (PECB, 1982) (citing *Edison Oyster Co. v. Pioneer Oyster Co.*, 22 Wn.2d 616 (1945)). The start of the six-month period, also called the triggering event, occurs when a potential complainant has "actual or constructive notice" of the complained-of action. *Spokane County*, Decision 13510 (PECB, 2022), *aff'd*, Decision 13510-B (citing *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990)).

The only exception to the strict enforcement of the statute of limitations exists is where the complainant had no actual or constructive notice of the acts or events that are the basis of the charges. *City of Bellevue*, Decision 9343-A (PECB, 2007) (citing *City of Pasco*, Decision 4197-A (PECB, 1994)).

Duty of Fair Representation

The duty of fair representation arises from the rights and privileges held by a union when it is certified or recognized as the "exclusive bargaining representative" under a collective bargaining agreement. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002) (citing *City of Seattle (IFPTE, Local 17)*, Decision 3199-B (PECB, 1991)). The Commission is vested with authority to ensure that exclusive bargaining representatives safeguard employee rights. *Id*.

In *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983), the Washington Supreme Court adopted three standards to measure whether a union has breached its duty of fair representation:

1. The union must treat all factions and segments of its membership without hostility or discrimination.

2. The broad discretion of the union in asserting the rights of its individual members must be exercised in complete good faith and honesty.

3. The union must avoid arbitrary conduct.

Each of these requirements represents a distinct and separate obligation.

A union breaches its duty of fair representation when its conduct is more than merely negligent; it must be arbitrary, discriminatory, or in bad faith or be based on considerations that are irrelevant, invidious, or unfair. *Washington State Liquor and Cannabis Board (Washington Federation of State Employees)*, Decision 13333, *aff'd,* Decision 13333-A (citing *City of Redmond (Redmond Employees Association)*, Decision 886 (PECB, 1980); *Vaca v. Sipes*, 386 U.S. 171 (1967)). The employee claiming a breach of the duty of fair representation has the burden of proof and must demonstrate that the union's actions or inactions were arbitrary, discriminatory, or in bad faith. *City of Renton (WSCCCE)*, Decision 1825 (PECB, 1984).

A union member's dissatisfaction with the level and skill of representation does not form the basis for a cause of action unless the member can prove that the union violated rights guaranteed in

statutes administered by the Commission. *Dayton School District (Dayton Education Association)*, Decision 8042-A (EDUC, 2004).

Discrimination

It is an unfair labor practice for a bargaining representative "[t]o discriminate against an employee because that employee has filed charges or given testimony under [the state collective bargaining] chapter." RCW 41.80.110(2)(c). The reason behind such a provision is that an employee or union member should not be punished for bringing to light unlawful acts of his or her exclusive bargaining representative no matter how much harm such a complaint causes the organization. *King County (Washington State Nurses Association)*, Decision 10172-C (PECB, 2011).

In discrimination cases, the Commission has consistently utilized the three-pronged burden shifting scheme endorsed by the Washington Supreme Court in *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991) and *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991). *Educational Service District 114*, Decision 4361-A (PECB, 1994). This burden shifting scheme has been applied by the Commission in cases where discrimination has been alleged against an exclusive bargaining representative. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B. When discrimination is claimed, the complainant must first establish a prima facie case by demonstrating the following:

1. The employee exercised a statutorily protected right;

2. The employee was deprived of some ascertainable right; and

3. There was a causal connection between the exercise of the legal right and the discriminatory action.

Educational Service District 114, Decision 4361-A; *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B. Once the complainant establishes his or her prima facie case, the respondent has the opportunity to articulate legitimate, non-retaliatory reasons for its actions. *Educational Service District 114*, Decision 4361-A. The respondent must produce relevant and admissible evidence of another motivation but need not do so by a preponderance of the evidence

necessary to sustain the burden of persuasion. *Id*. Finally, the employee may respond to a respondent's defense in one of two ways:

1. By showing that the respondent's reason(s) are pretextual; or

2. By showing that, although some or all of the respondent's stated reasons are legitimate, the respondent's pursuit of protected rights was nevertheless a substantial factor motivating the respondent to act in a discriminatory manner.

Id.; *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B.

Circumstantial evidence can be used to prove the prima facie element of causation, because those who are discriminating "are not in the habit of announcing retaliatory motives." *Educational Service District 114*, Decision 4361-A. In previous cases where the Commission has found a causal connection, there has generally been evidence of animus toward the protected activity or protected right. *See Reardan-Edwall School District*, Decision 6205-A (PECB, 1998) (citing *Mansfield School District,* Decision 5238-A (EDUC, 1996)) (holding that the superintendent telling the union activist he saw her as the union and would break her in order to break the union was discriminatory); *City of Winlock*, Decision 4784-A (PECB, 1995) (inferring an anti-union animus when employer vigorously opposed a representation petition and told a union adherent "you're making [the mayor] crazy with this union thing" and the employer complained of "union problems"); *Educational Service District 114*, Decision 4361-A (holding that it was discriminatory when the employer commented to a union activist that she had become a "rebel," and the employer warned an employee that there would be adverse employment consequences if he persisted in union activity). Knowledge of the protected activity, standing alone, is insufficient to find a causal connection. *Reardan-Edwall School District*, Decision 6205-A.

Application of Standards

There are No Genuine Issues of Material Fact

The May 5, 2023, consolidation of case numbers 135763-U-22 and 136328-U-23, as well as the second amended cause of action statement issued on August 17, 2023, framed the issues before

the Examiner. The Commission has long held that an Examiner may not rule on any evidence or argument beyond the scope of the preliminary ruling (cause of action statement). *King County,* Decision 9075-A (PECB, 2007).

Allegations pertaining to public disclosure requests under the PDRA, unilateral changes to mandatory subjects of bargaining, workplace whistleblower activity, or discrimination falling under the jurisdiction of other state or federal statutes are not germane to the scope of the issues framed by the causes of action under the consolidated complaint.

Upon reviewing the record in its entirety, which is comprised of over 2000 documents submitted between the parties, including undisputed exhibits,[13] affidavits, motions, and pleadings, the Examiner finds factual consistency and sufficient undisputed facts to render a decision.

Duty of Fair Representation

ULP complaints alleging failures to process grievances have consistently been dismissed at the preliminary ruling (cause of action statement) stage. *See Dayton School District (Dayton Education Association),* Decision 8042; *Bremerton Housing Authority (Teamsters Local 58),* Decision 2762 (PECB, 1987). The Commission does not assert jurisdiction in "duty of fair representation" cases arising exclusively out of the processing of grievances because it lacks jurisdiction to remedy any underlying contract violation. *Seattle School District (Seattle Education Association),* Decision 4917-A (EDUC, 1995).

A union, with reason, may decline to pursue a grievance at any stage of the grievance procedure. If a bargaining unit employee raises an issue or concerns with a union, the union has an obligation to fairly investigate such concerns to determine whether the union believes that the parties' collective bargaining agreement has been violated. *City of Seattle (Seattle Police Officers' Guild),* Decision 11291-A (PECB, 2012) (citing *State – Labor and Industries*, Decision 8263 (PSRA,

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[13] Neither party raised concerns of authenticity of any of the submitted exhibits. Many of the submitted exhibits are duplicative within both parties' submissions.

2003)). If the union determines the concerns have merit, the union has the right to file a grievance under the parties' collective bargaining agreement. If the union determines that the concerns lack merit, the union has no obligation to file a grievance. While a union owes this duty of fair representation to bargaining unit members, claims must be pursued before a court which can assert jurisdiction to determine, and remedy, any underlying contractual violation. *Id.*

An employee claiming a breach of duty of fair representation has the burden of proof to demonstrate that the union's actions or inactions were discriminatory or in bad faith. *City of Spokane (Washington State Council of County and City Employees)*, Decision 13088-A (PECB, 2020) (citing *City of Renton (Washington State Council of County and City Employees*), Decision 1825 (PECB, 1984)).

Alleged Breach of the Duty of Fair Representation by Failing to Respond to the July 19, 2022, Information Request

WFSE argues in its motion for summary judgment that, based on Fornara labeling her request as a "Public Disclosure Request," Union Representative Brown interpreted it as a request for WFSE to submit a records request to DCYF. Brown's declaration attached to the motion explains that Brown advised Fornara that WFSE does not make requests under the Public Records Act on behalf of its members. Brown attests that, in a later discussion with Fornara, she clarified the nature of the request as one seeking information from the union to provide statistical information. Upon clarification, Brown attests that she answered Fornara's inquiry the same day and provided the requested information.

Fornara's original complaint in case 135763-U-22 indicates that she had requested that the WFSE send a "**Public Disclosure Request**" regarding the grievances filed in Region 2 by WFSE #1326 from 2016 to the present via state email. Within that same pleading, Fornara wrote, "WFSE violated the Public Disclosure Request law by not responding within 5 days."

Fornara's first amended complaint filed in case 135763-U-22 on September 2, 2022, states, "On July 19, 2022, [Fornara] requested a public disclosure from WFSE regarding the number of

grievances requested from 2016 to the present. [Fornara] never got a response back from WFSE who violated Public Disclosure laws."

The union asserted in its October 18, 2023, reply summary that, even if the WFSE had negligently misunderstood Fornara's request, this would not constitute a breach of the duty of fair representation.

Fornara's October 13, 2023, response brief argues that the "WFSE's failure to provide crucial documents and delays in responding to [her] inquiries further undermines trust in their operations. The lack of transparency prevents members from accessing necessary information to defend their rights effectively." Later Fornara asserts that "multiple queries . . . remain unanswered" and argues that "WFSE failed to live up to its duty, either due to negligence or willful disregard."

The allegation, as framed in the August 17, 2023, second amended cause of action statement, claims that the union interfered with the complainant's collective bargaining rights by breaching its duty of fair representation owed to Fornara in failing to respond to her July 19, 2022, information request. Cause of action statements assume the facts alleged are true and provable.

The Commission does not have jurisdiction over alleged violations of the state's Public Records Act, chapter 42.56 RCW. Chapter 42.56 RCW; *See also Bainbridge Island School District (Bainbridge Island Educational Support Professional Association),* Decision 13410-A (PECB, 2022). Regarding both the complainant's original June 28, 2022 "public disclosure request" email to the WFSE, as well as her original and amended complaints, the Commission does not have jurisdiction to enforce alleged public records act violations, and such allegations are routinely dismissed by the Commission. *King County,* Decision 13162-A (PECB, 2020); *see also Bainbridge Island School District (Bainbridge Island Educational Support Professional Association),* Decision 13410-A.

Even reviewing the facts in the light most favorable to the nonmoving party, it's apparent that, once the confusion around the labeling of the request as a "public disclosure request" was clarified by Brown, Fornara received the requested information the same day. Fornara's October 19, 2022,

clarification email to Brown still contained the subject line "Public Disclosure Request" and also amended the scope of the information sought. Specifically, Fornara clarified her request to "the number of grievances processed in Yakima and Toppenish since 2016 to the present and those that were parlayed into arbitration from 2016 to the present." Less than two hours later, Brown answered both of Fornara's questions, providing both grievance numbers and the amount of grievances that had completed arbitration; Brown provided additional information on the number of grievances that were supported through arbitration but had settled prior to the commencement of arbitration, as well as an explanation of the remainder of grievances during that period.

Brown attests that, based on her reading of Fornara's original request, there was confusion about what Fornara was requesting the WFSE to do. Brown attests that the WFSE does not make public records requests to state agencies and that she advised Fornara that she could make such a request by filing public records request forms directed to DCYF. Their subsequent October 2022 clarification resulted in Brown providing the information from WFSE as Fornara requested.

The complainant does not meet the required burden of proof to show that the union breached its duty of fair representation by failing to respond to the complainant's information request. At most, it appears that the union made a mistake in misinterpreting Fornara's request as a public records request and not a request for information. As noted above, such mere negligent actions by a union do not constitute a violation of the union's duties. Rather, the union must have taken actions or inactions that were arbitrary, discriminatory, or in bad faith. *City of Redmond (Redmond Employees Association),* Decision 886.

The U.S. Supreme Court established the standard for whether a union acted in an arbitrary manner in *Air Line Pilots Association v. O'Neill,* 499 U.S. 65 (1991). The Court determined that "a union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness,' as to be irrational." *Id.* at 67, citing *Ford Motor Co. v. Huffman,* 345 U.S. 330, 338 (1953).

The simple mistake of misconstruing a confusing email request and assuming it was in fact a public records request, as stated on its face, may have been erroneous, but this act remains within that

"wide range of reasonableness" and did not rise to the level of irrational, as in *Air Line Pilots Association*. Therefore, the union's conduct in how it responded to, and ultimately quickly remedied, the complainant's *actual* request as a request for information to the union does not fall within an *Air Line Pilots Association* definition of arbitrary. The complainant did not prove that the union's conduct regarding the request for information was arbitrary, discriminatory, or in bad faith. Therefore, the complainant failed to prove the union violated its duty of fair representation through its failure to respond to her information request.

Alleged Breach of the Duty of Fair Representation by Failing to Advance Complainant's Grievances to Arbitration

As noted, this allegation in the original complaint filed on August 30, 2022, is allowed a six-month statute of limitations window dating back to February 28, 2022. *See footnote 7.* There were two grievances referenced in the filings between February 28 and August 30, 2022: the March 15, 2022, drafted grievance and the grievance filed on or around July 21, 2022.

The March 15, 2022, drafted grievance was denied for lack of merit by the WFSE's local grievance committee and never filed. The local grievance committee is comprised of WFSE members from around the local selected by the WFSE membership. Representative Gonzalez advised the complainant of the grievance committee's denial on or around March 17, 2022. As it was never filed, the grievance did not advance through the CBA's grievance steps and could not be "advanced to arbitration."

The second grievance during the six-month statute of limitations, filed on or around July 21, 2022, did proceed through the CBA's grievance Step 3 hearing, as noted above. It was not until after the third amended complaint was filed on November 7, 2022, that Fornara received the cause of action statement on November 30, 2022, of interference for violating the duty of fair representation for failing to advance grievances by Fornara to arbitration.

As noted, the statewide grievance committee ultimately denied the request to move the July 21, 2022, grievance to arbitration, finding that the employer met its burden of just cause under the CBA to impose the amended disciplinary action of the letter of reprimand. The statewide grievance

committee is comprised of WFSE members from around the state selected by the WFSE membership.

As noted, the Commission has long held that an Examiner may not rule on any evidence or argument beyond the scope of the preliminary ruling (cause of action statement). *King County*, Decision 9075-A. Here, while the scope of the cause of action statement does not specify the dates of the grievances in the allegations, the two referenced in the complaint filings during the six-month statute of limitations were both reviewed by the union's grievance committees. Arguably, the March 15, 2022, drafted grievance *could* be said to have been denied advancement through arbitration for the mere fact that the union declined to file it with the agency. Conversely, the July 21, 2022, grievance did in fact get denied by the statewide grievance committee to advance through arbitration.

In either instance, the grievance committee is the union's sounding board for grievances and part of the internal processing the union established. The Commission recognizes that unions have substantial discretion in their decision making, even if the ultimate decision proves to be wrong. *Columbia Basin College (Washington Public Employees Association),* Decision 9210-A (PSRA, 2006) (citing *Marquez v. Screen Actors Guild*, 525 U.S. 33 (1998); *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361, 375(1983)). A union, with reason, may decline to pursue a grievance at any stage of the grievance procedure. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A. If a bargaining unit employee raises an issue or concerns with a union, the union has an obligation to fairly investigate such concerns to determine whether the union believes that the parties' collective bargaining agreement has been violated. *Id.* (citing *State – Labor and Industries*, Decision 8263). If the union determines the concerns lack merit, the union has no obligation to file or further process a grievance. *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A.

Both the March 15, 2022, and the July 21, 2022, grievances were reviewed by the grievance committee and denied for lacking merit and because the committee believed the agency had met just cause requirements based on the reduced disciplinary action, respectively. For the former grievance union denial, Fornara was provided the union's processing guidelines and failed to file a timely internal union appeal. For the latter grievance, Fornara was afforded the opportunity to

present her arguments in person to the grievance committee as to why she believed the union should pursue her case through arbitration. Brown assisted her at this meeting. The statewide grievance committee issued its ultimate decision on November 18, 2022, finding that it would not pursue the complainant's July 21, 2022, grievance to arbitration.

The union's determinations—that Fornara's March 15, 2022, grievance lacked merit and that her July 21, 2022, grievance did not substantiate that the agency violated just cause considerations—were not outside the "wide range of reasonableness" as to be found "irrational." *Air Line Pilots Association v. O'Neill,* 499 U.S. 65.

Many of the complainant's ULP filings related to these grievances assert that DCYF issued her a memo of concern in April of 2021 under false pretenses and that, therefore, any subsequent disciplinary action was building a case for progressive discipline against her and ultimately lead to the termination of her employment. Further, the complainant speculates that there is discrimination in hiring, promotional opportunities, and union representation based on race. The 2021 memo of concern predates the six-month statute of limitations, and speculation that the union failed to pursue the complainant's grievances after February 28, 2022, are not within the scope of the cause of action statement. Should Fornara believe that additional specific allegations should be included as a cause of action, she could have asked for timely reconsideration of the cause of action statement in accordance with WAC 391-45-110(b) or filed a timely amended complaint.

Speculation alone is not sufficient to support a denial of summary judgment. *State – Office of the Governor,* Decision 10948-A (PSRA, 2011). Absent evidence to create a reasonable inference that the union's actions were discriminatory, arbitrary, or in bad faith, or based on considerations that were irrelevant, invidious, or unfair, Fornara's allegations do not survive summary judgment. Fornara has only provided speculations and has not supplied evidence supporting the allegation that the union failed to advance her grievances to arbitration based on discriminatory, arbitrary, or bad faith consideration. The union took reasonable actions by submitting Fornara's March and July 2022 grievances to the respective grievance committees for review. The fact that Fornara was dissatisfied with the outcome of the grievance committees' dispositions or disagreed with the

union's rationale is insufficient to prove a duty of fair representation violation. *See Dayton School District (Dayton Education Association),* Decision 8042-A.

Alleged Discrimination/Retaliation for Filing 2016 ULP Complaint under chapter 41.56 RCW or Other ULP Complaint

The 2016 ULP Complaint

Fornara's initial complaint claims WFSE retaliated against her for "filing a ULP complaint in 2016, confronting [WFSE] of their collusion and lack of fair representation, and confronting Sills that WFSE only protects her rights, as the president, as observed." Later in the complaint, Fornara argued, "WFSE discriminate[d] against [Fornara] because she filed charges under this chapter against AFL-CIO, OPEIU 8, Case 128209-U-16.[14] This would explain the reason WFSE ostracized [Fornara] in participating in union activities and WFSE's failure to provide union rights."

Even further into her initial complaint, Fornara repeats this discrimination allegation and agency case number. She then suggests that WFSE abdicated its duty of fair representation because of its affiliation to her former union, the OPEIU Local 8, as both organizations fall under the same umbrella of the American Federation of State, County, and Municipal Employees (AFSCME). Within the same numbered pleading, Fornara references allegations from 2017 against the former union president, Julian Moore, and against the current local WFSE president, Debbie Sills, that she indicates occurred when she was "new to the Yakima Office and procedures." Position description forms included with Fornara's October 13, 2023, response to the motion for summary judgment indicate that she started with DCYF in Toppenish in 2016 before her transfer to the Yakima office in 2017.

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[14] Records maintained by this agency reflect that Fornara filed a complaint against her former union, OPEIU, Local 8, on May 24, 2016, case number 128209-U-16. Fornara withdrew this complaint on April 14, 2017, and the case was closed on April 19, 2017.

Fornara points out in her second amended complaint, filed on November 1, 2022, that when she worked for her former employer, Thurston County, she was represented by OPEIU Local 8. In particular, Fornara references that the attorney who represented the OPEIU union representative, Younglove, was the same attorney who is representing the WFSE for the instant case. The complainant suggests that she does not trust the WFSE's attorney because he "would not litigate or settle with [Fornara] after Liddle cancelled the arbitration without notifying [Fornara]." Leslie Liddle was the OPEIU Local 8 union representative who assisted the complainant in 2016 during her former employment with Thurston County. Fornara did not file any sort of motion or request with this agency regarding the WFSE's chosen legal representative for this case.

Fornara's Prima Facie Case

Fornara satisfies the first two elements of her prima facie case. She engaged in protected activity by filing a ULP complaint with the agency in 2016. *See footnote 14.* For the second element, the union declined to file her drafted March 15, 2022, grievance or to pursue her July 21, 2022, grievance to arbitration, and, therefore, she was deprived of potential contractual grievance remedies, which could constitute the deprivation of a right.

Fornara's original complaint, filed on August 30, 2022, claimed that "WFSE's retaliation against [Fornara] stems from filing a ULP complaint in 2016, confronting WFSE's [sic] of their collusion and lack of fair representation, and confronting Sills that WFSE only protects her rights, as the president, as observed." Later in the same complaint, Fornara claims that WFSE condoned DCYF's intent to terminate her employment by not investigating any of her concerns. She then points by way of example to Brown, a WFSE union representative, "within minutes" ascertaining "deficiencies" in the discipline process.[15]

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[15] The complaint reads "DP" in paragraph number 33, which the Examiner based in context of the entire complaint and notes that paragraph number 13 provided the reference defines this as "discipline process (DP)."

The third element of the prima facie case of discrimination, however, has not been met. Fornara has failed to demonstrate a causal connection between the 2016 filing of an unfair labor practice against her former bargaining representative, OPEIU Local 8, and the union's election to not file or pursue her two 2022 grievances against DCYF. In response to the motion for summary judgment, the complainant filed over 1,600 documents supporting her opposition to the motion, many of them duplicative. The undersigned has reviewed these documents and can find no evidence to support a causal connection. Thus, a prima facie case cannot be established.

An articulated reason is a pretext when it is not the real reason for the adverse action and there is no legitimate business justification for the action. *Snohomish County*, Decision 12723-B (PECB, 2018) (citing *Educational Service District 114*, Decision 4361-A). The union provided legitimate, non-discriminatory reasons for not filing or pursuing to arbitration Fornara's 2022 grievances, which would further require the dismissal of an established prima facie case. An articulated reason is a pretext when it is not the real reason for the adverse action and there is no legitimate business justification for the action. *Id.* Fornara has not provided evidence that the union's proffered reasons are pretextual, nor that her 2016 pursuit of an unfair labor practice complaint against OPEIU Local 8 was a substantial motivating factor.

Alleged Discrimination for Filing a ULP Complaint

The complainant's March 22, 2023, ULP complaint alleges that she experienced adverse actions and reprisals after filing a ULP complaint against both DCYF and WFSE with the agency. The complainant points to allegations that adverse actions and reprisals came in the form of unjust reprimands, denial of referral for promotion and management trainings, unjustified negative performance evaluations, changes in job responsibilities, and other "unfavorable changes in [Fornara's] working conditions" without union protection. The complainant alleges there is evidence of temporal proximity between the filing of the complaints and the adverse actions, as well as "other indications that the adverse actions were a direct result of [Fornara's] protected activity."

While many of the adverse actions listed in the complaint are alleged actions taken by the employing agency and are not before this Examiner, the allegation that the employer took these

actions "without union protection" is. The cause of action statement issued on April 3, 2023, did not specify conduct the union allegedly engaged in that could be construed as "retaliatory." Of the union conduct alleged in this complaint that falls within the six-month statute of limitations (*i.e.*, between September 22, 2022, and March 22, 2023), Fornara alleges DCYF made a unilateral change on February 24, 2023, to her unit's expectations without negotiating with the union. Fornara alleges that the unit expectation changes "disproportionately" impacted her and are discriminatory. No other specifics are provided.

Other allegations in the complaint of retaliatory union conduct were undated in the complaint, but reference similar themes of the WFSE's failure to file grievances on her behalf and failure of the union to prevent "unfair practices" or protect her rights. In the section labeled "Conclusion" of her March 22, 2023, complaint, Fornara "request[s] that the Public Employment Relations Commission (PERC) thoroughly investigate these allegations and take appropriate action to address the violations committed by both DCYF and WFSE." Fornara repeated this refrain in her October 13, 2023, response to the motion for summary judgment, stating, "The RCW 41.80.110(2) violations by WFSE are actions at odds with this statute. For justice and fairness, these violations demand rigorous investigation and subsequent accountability."[16]

Untimeliness of Allegation that Sills "Reported On" Fornara

In the March 22, 2023, ULP complaint, Fornara alleges that she was not aware that Sills, also a Social Service Specialist 3 and the WFSE Local 1326 President, "reported on [her] . . . until a few days before filing this Retaliation Complaint against both DCYF and WFSE . . . ." Fornara alleges that Sills reported to human resources and a DCYF Administrator on September 1, 2022, regarding one of Fornara's clients, and DCYF initiated an administrative investigation.

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16 *See* complainant's October 13, 2022, response to the motion for summary judgment at 12–13.

The burden of proving that the statute of limitations should be tolled rests with the party requesting tolling. *City of Renton*, Decision 12563-A (PECB, 2016). The only exception to the strict enforcement of the six-month statute of limitations is when the complainant had no actual or constructive notice of the acts or events which are the basis of the charges. *City of Pasco*, Decision 4197-A (PECB, 1994). Under the "discovery rule," the statute of limitations does not begin to run until the complainant, using reasonable diligence, would have discovered the cause of action. *U.S. Oil & Refining Co. v. State Department of Ecology*, 96 Wn.2d 85, 92 (1981). The doctrine of equitable tolling requires the exercise of reasonable diligence on the part of the complainant. *Adult Residential Care, Inc.*, 344 NLRB 826 (2005). The party asserting that equitable tolling should apply bears the burden of proof. *Nickum v. City of Bainbridge Island*, 153 Wn. App. 366, 379 (2009). To prove that the statute should be tolled, the complainant would need to show deception or concealment of the facts forming the basis of the unfair labor practice complaint and the exercise of diligence by the complainant. *Millay v. Cam*, 135 Wn.2d 193, 206 (1998).

Even if this particular allegation were allowed to be tolled, the complainant failed to demonstrate any evidence that Sills even had knowledge of Fornara's ULP complaints or that Sills' "reporting on" Fornara to human resources and administrators led to any particular adverse action by the employer, such as discipline. Speculation regarding a material fact is not one on which a preliminary ruling (cause of action) can be based, and a complainant must provide a factual basis for a cause of action to exist. *State – Office of the Governor*, Decision 10948 (PSRA, 2010), *aff'd,* Decision 10948-A, (citing *Whatcom County*, Decision 8246-A (PECB, 2004)).

No documents were attached to the March 22, 2023, complaint, although the complainant filed several unsolicited documents after the issuance of the April 3, 2023, cause of action statement and before the consolidated case was assigned to the undersigned on May 5, 2023. Fornara failed to submit documentation to support that she lacked knowledge of the alleged September 1, 2022, report Sills made to human resources and administration about her. She further failed to establish that Sills or the WFSE engaged in deception or concealment to hide the alleged report and failed to establish that she exercised diligence in finding the information. Finally, there is no indication

that links the report made by Sills to any alleged employer or union adverse action against her. Fornara did not file a motion or request to amend the March 22, 2023, complaint.[17]

The complainant's October 13, 2023, response to the motion for summary judgment alleges that Sills "twice reported against [Fornara]" after Fornara filed ULP complaints against the union and DCYF.[18] Attachment 1 to that response chronologically lists what is labeled as "Material Facts," and Sills' alleged September 1, 2022, report regarding Fornara is not included. Attachment 6 to that response is a list of dates and events labeled, "WFSE Denials and Premeditated Reprisals." There is no reference to the September 1, 2022, report allegedly made by Sills in that list either.

The Examiner has conducted a thorough review of the complaints, answers, motion for summary judgment, and supporting documentation and finds no evidence that either Sills or the WFSE colluded with DCYF to instigate administrative investigations or other engage in other conduct "against" Fornara. Supporting documents submitted with the complainant's response to the motion for summary judgment even indicate that Sills and Gonzalez worked together to ensure that Fornara had a union representative with her for workplace and administrative investigations. The evidence supports that Sills and Gonzalez would reach out to Fornara for documentation to support allegations in her grievance requests. Further, Fornara failed to produce evidence of deception or concealment on the part of Sills or the WFSE related to the alleged September 1, 2022, report Sills made to DCYF. Fornara failed to meet the burden of proof that that allegation as an example of a retaliatory adverse action should be tolled until the March 22, 2023, ULP complaint. Therefore, I find the allegation that Sills' "reported on" Fornara on September 1, 2022, to be untimely.

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[17] The complainant's May 9, 2023, request for reconsideration made to the Unfair Labor Practice Administrator only pertained to allegations originally under case number 135763-U-22.

[18] *See* complainant's October 13, 2023, response to the motion for summary judgment.

The Public Employment Relations Commission is not tasked with investigating unfair labor practice complaints.

In unfair labor practice proceedings, the ultimate burdens of pleading, prosecution, and proof all lie with the party that files the complaint. *Lower Columbia College,* Decision 8117-B (PSRA, 2005) (citing *City of Seattle,* Decision 8313-B (PECB, 2004)). The agency does not "investigate" charges or draft complaints in the manner familiar to those who practice before the NLRB. *Lower Columbia College,* Decision 8117-B.

The complainant bears the burden of proof to support her allegations and it is not within the Commission's purview to investigate Fornara's allegations or piece together specific instances of alleged retaliatory union conduct during the six-month window leading up to the March 23, 2023, unfair labor practice complaint.

Another claimed specific adverse action is the DCYF's unilateral change on February 24, 2023, to her unit's expectations without negotiating with the union. Fornara alleges that the unit expectation changes "disproportionately" impacted her and are discriminatory. Individual employees do not have standing to file or pursue "refusal to bargain" allegations, such as unilateral changes to mandatory subjects, only the employer and exclusive bargaining representative for organized employees have standing. *South Whidbey School District,* Decision 11134-A (EDUC, 2011) (citing *Renton School District,* Decision 6300-A (PECB, 1998)). Further, the complainant failed to produce evidence that her work unit's new expectations disproportionately impacted her or that she was discriminatorily targeted through those expectations and the union failed to provide her "protection."

The final claimed adverse action during the six-month statute of limitations is the union's failure to file grievances on the complainant's behalf and failure of the union to prevent "unfair practices" or protect her rights. Again, while no specific dates or instances were alleged in the complaint, the only pending grievance during this statutory six-month period was the July 21, 2022, grievance. The statewide grievance committee reached a decision to not take the reduced discipline, the written reprimand, to arbitration and advised Fornara on November 18, 2022. As previously noted, the union determined that the employer had met the "just cause" standards to impose the reduced

discipline of the written reprimand and employer-directed trainings from the original reduction-in-pay disciplinary action.

While this failure to advance the July 21, 2022, grievance to arbitration was an "adverse action," the union provided a legitimate, non-retaliatory reason for its actions. The complainant failed to produce evidence of another motivation, failed to show the union's decision was pretextual, and failed to show that her filing of ULP complaints against the union was a substantial motivating factor in the union's decision-making. Brown assisted Fornara through the grievance step process, made arguments to reduce the imposed discipline, and requested Fornara's employer-maintained files. Brown even assisted Fornara before the grievance committee *after* the employer reduced Fornara's discipline because Fornara was not satisfied with the results and did not want to engage in the employer-directed trainings.

Again, the fact that Fornara was dissatisfied with the outcome of the grievance committee's dispositions or disagreed with the union's rationale is insufficient to prove that the union violated rights guaranteed in statutes administered by the Commission. *See Dayton School District (Dayton Education Association),* Decision 8042-A.

CONCLUSION

The complainant has not established any material evidence that there are material facts in dispute, and therefore, summary judgment is appropriate. Fornara failed to present evidence substantiating that the union's conduct regarding her June 28, 2022, request for information, the denial of filing her drafted March 15, 2022, grievance, or the decision to not pursue to arbitration the July 21, 2022, grievance was arbitrary, discriminatory, or in bad faith. Accordingly, her two allegations for interference for alleged violations of the duty of fair representation must be dismissed.

In addition, the union provided legitimate, non-discriminatory reasons for not filing or pursuing grievances to arbitration. Fornara has failed to establish that the filing of her 2016 unfair labor practice against OPEIU Local 8, or filing another unfair labor practice complaint, caused or was a substantial motivating factor in the union's decisions to either not file the March 15, 2022,

grievance, or to not advance the July 21, 2022, grievance to arbitration. Therefore, Fornara failed to establish that the union discriminated by retaliating against her for filing the 2016 unfair labor practice or another unfair labor practice, as contemplated by the statute.

FINDINGS OF FACT

1. The Washington State Department of Children, Youth, and Families (DCYF or employer) is a public employer as defined by RCW 41.80.005(8).

2. Angelita Longoria Fornara is a public employee as defined by RCW 41.80.005(6).

3. At the time of filing these unfair labor practice complaints, Angelita Longoria Fornara was employed by the DCYF as a Social Service Specialist 3 and was assigned to the Yakima field office.

4. Fornara began working for the employer in 2010, was employed by Thurston County in the interim, and returned to the employer in 2016.

5. While employed by Thurston County, Fornara's position in 2016 was part of a bargaining unit represented by OPEIU Local 8.

6. In 2016, Fornara filed an unfair labor practice complaint against OPEIU Local 8.

7. The complainant sought the assistance of the union to file a grievance over the employer's issuance of a positive and constructive meeting, and a notice of intent to discipline with subsequent added allegations dating from April 19, 2021, through February 16, 2022.

8. The employer issued disciplinary action to the complainant on February 11, 2022.

9. On March 15, 2022, Union Representative Gus Gonzalez assisted the complainant in drafting a grievance for the disciplinary action.

10. The March 15, 2022, the drafted grievance was presented to the local grievance committee, which determined that the grievance lacked merit, and it was never filed.

11. The complainant was afforded the opportunity to appear in person to support her grievance to the committee but chose not to do so.

12. The union advised the complainant of the committee's findings on March 17, 2022, and provided her with the union's internal grievance policy.

13. The complainant did not file a timely internal union appeal.

14. The complainant responded on April 4, 2022, to the committee's grievance denial with a lengthy email that included various allegations against the union and employer.

15. Another union representative, Tawny Brown, followed up on the complainant's April 4, 2022, email on April 8, 2022, and advised her she was past the internal union appeal time and offered her the opportunity to meet during a work break "to take a full in-depth review of [her] concerns."

16. On June 28, 2022, the complainant emailed the WFSE's Member Connection Center and requested, "…the number of grievance requests submitted against DCYF in Region 2 by WFSE from 2016 to the present." The subject line of the email states, "Public Disclosure Request."

17. Several of the complainant's filings reference the WFSE's alleged failure to respond to her public disclosure request.

18. Brown advised Fornara that WFSE does not make requests under the Public Records Act on behalf of its members. In a later discussion with Fornara, Brown clarified the nature of the request as one seeking information from the union to provide statistical information.

19. Once the confusion around the labeling of the request as a "public disclosure request" was clarified by Brown, Fornara received the requested information the same day.

20. On or around June 2, 2022, the employer issued disciplinary action against the complainant. As a result, the employer reduced the complainant's pay by two pay steps for

a one-month period effective July 1, 2022, and directed her to attend four trainings; Fornara completed one of those trainings in July of 2022.

21. Brown assisted Fornara in filing another grievance on or around July 21, 2022, regarding the employer's June 2, 2022, reduction-in-pay discipline.

22. Fornara was represented by Brown through the grievance process, including at the Step 3 hearing on October 14, 2022. After that meeting, the employer issued its Step 3 response on October 28, 2022, wherein the original one-month reduction-in-pay was reduced to a written reprimand and ordered backpay issued to Fornara.

23. The employer maintained its original directive that required Fornara to attend the remaining three training courses during "protected" work time.

24. Fornara was not satisfied with the employer's amended discipline after the Step 3 hearing and disagreed that she should have to attend the three trainings.

25. Brown assisted Fornara in preparing documentation to present to the union's internal statewide grievance committee and joined Fornara before the committee to request that the grievance be moved to arbitration under the parties' collective bargaining agreement.

26. On November 18, 2022, the committee denied the request to move the grievance to arbitration, finding that the employer met its burden of just cause under the CBA to impose the amended disciplinary action.

27. On August 30, 2022, Fornara filed an unfair labor practice complaint against the union.

28. On September 2, 2022, Fornara filed an amended unfair labor practice complaint against the union.

29. On November 1 and 7, 2022, Fornara filed second and third amended unfair labor complaints, respectively, against the union.

30. On March 22, 2023, Fornara filed unfair labor practice complaints against the union and the employer.

31. On September 27, 2023, the union filed a motion for summary judgment.

32. The complainant failed to present evidence that there are material facts in dispute.

33. The complainant failed to present evidence substantiating that the union's conduct regarding her June 28, 2022, request for information, the denial of filing her drafted March 15, 2022, grievance, or the decision to not pursue to arbitration the July 21, 2022, grievance was arbitrary, discriminatory, or in bad faith.

34. Fornara has failed to establish that the filing of her 2016 unfair labor practice complaint against OPEIU Local 8, or for filing another unfair labor practice complaint, caused or was a substantial motivating factor in the union's decisions to either not file the March 15, 2022, grievance, or to not advance the July 21, 2022, grievance to arbitration.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.80 RCW and chapter 391-45 WAC.

2. No genuine issue of material fact exists regarding any of the four allegations in the consolidated cases under WAC 10-08-135, and the union is entitled to judgment as a matter of law.

3. According to findings of fact 7 through 15, and 20 through 26, Fornara did not meet her burden of proof to show that the union's failure to advance her grievance(s) to arbitration resulted from interference with employee rights in violation of RCW 41.80.110(2)(a) by a breach of its duty of fair representation.

4. According to findings of fact 16 through 19, Fornara did not meet her burden of proof to show that the union's failure to respond to her July 19, 2022, information request resulted

from interference with employee rights in violation of RCW 41.80.110(2)(a) by a breach of its duty of fair representation.

5. As described in findings of fact 6 through 15, and 20 through 26, the union did not discriminate against Fornara in violation of RCW 41.80.110(1)(c), nor did it commit derivative interference in violation of RCW 41.80.110(1)(a), within six months of the date the complaint was filed for retaliating against her for filing an unfair labor practice complaint under the Public Employment Collective Bargaining Act, chapter 41.56.

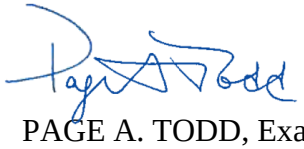
6. As described in findings of fact 7 through 15, and 20 through 29, the union did not discriminate against Fornara in violation of RCW 41.80.110(1)(c), nor did it commit derivative interference in violation of RCW 41.80.110(1)(a), within six months of the date the complaint was filed for retaliating against her for filing an unfair labor practice complaint.

ORDER

The motion for summary judgment is granted and the consolidated complaints charging unfair labor practices in the above-captioned matter are dismissed.

ISSUED at Olympia, Washington, this 29th day of January, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



PAGE A. TODD, 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.