

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ANJELITA LONGORIA FORNARA,

Complainant,

vs.

WASHINGTON STATE DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES,

Respondent.

CASE 138047-U-23

DECISION 13819 - PSRA

DECISION OF COMMISSION ON
MOTION FOR TEMPORARY RELIEF

Anjelita Fornara, the complainant.

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

SUMMARY OF DECISION

The issue is whether the Commission should seek temporary relief for the complainant, Anjelita Fornara, in the superior court. The complainant has not established that she has “no fair or adequate remedy and would suffer irreparable harm if the status quo is not returned” before the completion of the administrative proceedings. WAC 391-45-430(5). We deny the motion for temporary relief.

PROCEDURAL BACKGROUND

On December 6, 2023, Anjelita Fornara filed an unfair labor practice complaint against the Washington State Department of Children, Youth, and Families (DCYF). On January 4, 2024, an Unfair Labor Practice (ULP) Administrator issued a deficiency notice. On January 18, 2024, Fornara filed an amended complaint. In the amended complaint, Fornara alleged the employer retaliated against her and discriminated against her for filing unfair labor practice complaints.

After reviewing the amended unfair labor practice complaint, the ULP Administrator issued a cause of action statement on February 20, 2024. The unfair labor practice complaints stated a cause of action for

Employer discrimination in violation of RCW 41.80.110(c) [and if so derivative interference in violation of RCW 41.80.110(a)] within six months of the date the complaint was filed, by retaliating against Anjelita Longoria Fornara for filing an unfair labor practice complaint.

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

On February 9, 2024, Fornara filed a notice of intent to file a motion for temporary relief. On February 26, 2024, Fornara filed a motion for temporary relief in this case and a supporting affidavit. On March 4, 2024, the DCYF filed its response to the motion for temporary relief. The DCYF included an affidavit and supporting evidence. On March 4, 2024, Fornara filed an additional motion for temporary relief and a motion for summary judgment with supporting affidavits.

ANALYSIS

Standard for Seeking Temporary Relief

The Commission is empowered to prevent unfair labor practices and may petition the superior court for appropriate temporary relief. RCW 41.56.160. The Commission does not seek temporary relief “unless it appears that one or more of the allegations in the complaint is of such a nature that, if sustained, the complainant would have no fair or adequate remedy and would suffer irreparable harm if the status quo is not returned pending the completion of administrative proceedings.” WAC 391-45-430(5); *City of Spokane*, Decision 11673 (PECB, 2013), at 2; *Steilacoom School District*, Decision 2527 (EDUC, 1986) (granting a motion for temporary relief where the union had substantial likelihood of success on the merits, and the use of strike replacements would cause irreparable harm with no adequate legal remedy); *City of Tacoma*, Decision 5686 (PECB, 1996) (granting temporary relief where the implementation of a pending change to a civil service rule would cause irreparable harm, and an adequate legal remedy would

not exist in the absence of maintaining the status quo); *Kiona Benton School District*, Decision 10865 (EDUC, 2010) (denying temporary relief when the union did not establish irreparable harm or lack of an adequate remedy).

Fornara has properly filed the February 26, 2024, motion for temporary relief. As required by WAC 391-45-430(1), on February 9, 2024, Fornara filed written notice of intent to file a motion for temporary relief. Fornara filed the motion for temporary relief after the ULP Administrator issued a cause of action statement. WAC 391-45-430(3). On March 4, 2024, the DCYF filed a response to the motion for temporary relief. That same day, Fornara filed a new motion for temporary relief. The Commission has consolidated the two motions for the purposes of this decision.

Fornara Has Failed to Establish That She Is Without an Adequate Remedy or Will Suffer Irreparable Harm.

Only in rare circumstances has the Commission found that a party demonstrated it lacked an adequate remedy or would suffer irreparable harm if the status quo were not maintained. *Steilacoom School District*, Decision 2527; *City of Tacoma*, Decision 5686. For example, in *City of Tacoma*, the Tacoma Police Union filed an unfair labor practice complaint alleging the employer unilaterally changed the civil service procedures for promotions. The Commission granted a joint request from the City of Tacoma and the Tacoma Police Union for temporary relief to prevent the employer from making promotions under recently implemented civil service rules. If the Tacoma Police Union prevailed on the unfair labor practice complaint, undoing the change would have created hardships for employees affected by the promotions, regardless of if they received the job. Thus, an adequate remedy did not exist if the status quo were not maintained pending the unfair labor practice proceedings.

Fornara requested the Commission seek an injunction to restore her employment status. The Commission's standard remedies are adequate to protect her from irreparable harm in her situation. The Commission has authority "to issue appropriate remedial orders" to return injured parties back, as nearly as possible, to the situation they would have enjoyed had no unfair labor practice been committed. RCW 41.80.120; *Okanogan Public Hospital District 4*, Decision 5809 (PECB, 1997), *aff'd*, Decision 5809-A (PECB, 1997). The remedy for termination includes an

award of backpay and offer of reinstatement. *See City of Pasco*, Decision 504 (PECB, 1978), *aff'd*, Decision 504-A (PECB, 1978). The standard remedy requires an offending party to cease and desist and, if necessary, restore the status quo; make employees whole; post notice of the violation; and order the parties to bargain from the status quo. *City of Anacortes*, Decision 6863-B (PECB, 2001). In contrast to *City of Tacoma*, Fornara has not established that, should she prevail on her unfair labor practice complaint, the Commission's standard remedy for unlawful discrimination—backpay with interest and reinstatement—would not be adequate.

In her affidavit, Fornara asserts, “the slow pace of these unfair labor charges cannot adequately protect me from immediate and ongoing harm inflicted by” the DCYF. The time necessary for the Commission to process an unfair labor practice complaint has been found to be insufficient to establish irreparable harm or a lack of an adequate legal remedy. *Benton County*, Decision 13710-A (PECB, 2023) (denying temporary relief when the complainant moved for temporary relief after the hearing but before the briefs were due). Fornara has not established that allowing the administrative process to proceed will either cause her irreparable harm or will not provide an adequate remedy.

ORDER

The motion for temporary relief is DENIED.

ISSUED at Olympia, Washington, this 16th day of April, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK BUSTO, Commissioner



ELIZABETH FORD, Commissioner