Washington State Department of Children, Youth, and Families (Washington Federation of State Employees), Decision 13774-B (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-B - PSRA DECISION OF COMMISSION ON MOTION FOR SUMMARY JUDGMENT

Anjelita Fornara, the complainant.

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

SUMMARY OF DECISION

The questions before the Commission are whether to grant the motion to reopen the record to accept new evidence and whether summary judgment is appropriate. Complainant Anjelita Longoria Fornara has not filed a timely motion to reopen the hearing. There are no issues of genuine material fact. Accordingly, summary judgment was appropriate. We affirm the Examiner.

PROCEDURAL BACKGROUND

Anjelita Longoria Fornara has filed multiple unfair labor practice (ULP) complaints against the Washington State Department of Children, Youth, and Families (DCYF or employer) and the Washington Federation of State Employees (WFSE or union). On May 18, 2022, Fornara filed an unfair labor practice complaint against the employer.[1] After a hearing, the Examiner dismissed the complaint. *Washington State Department of Children, Youth, and Families*, Decision 13647 (PSRA, 2023). Fornara appealed this decision to the Commission. On September 19, 2023, the Commission dismissed the appeal. *Washington State Department of Children, Youth, and Families*, Decision 13647-A (PSRA, 2023). Fornara did not appeal the decision to court. The Commission closed the case on October 26, 2023.

On August 30, 2022, Anjelita Fornara filed unfair labor practice complaints against the WFSE. Fornara filed amended complaints on September 2 and November 1 and 7, 2022. Fornara alleged the WFSE breached its duty of fair representation by not advancing her grievances and that it had discriminated against her for filing unfair labor practice complaints. The ULP Administrator found a cause of action existed on November 30, 2022.[2]

On March 22, 2023, Fornara filed a new unfair labor practice complaint against the WFSE alleging retaliation. The ULP Administrator issued a cause of action statement on April 3, 2023. The agency consolidated the cases for processing.

On January 29, 2024, Examiner Page Todd issued a decision dismissing Fornara's unfair labor practice complaints on summary judgement. *Washington State Department of Children, Youth, and Families (Washington Federation of State Employees)*, Decision 13774 (PSRA, 2024). On February 9, 2024, Fornara filed a letter stating her intent to appeal the decision and to file a

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[1] This was filed as case 135103-U-22.

[2] At the time that the ULP Administrator issued the cause of action statement, this document type was referred to as a preliminary ruling. The Commission has since adopted rules identifying this document type as a cause of action statement. We use one name for consistency.

motion for temporary relief. On February 12, 2024, Fornara appealed the Examiner's decision. Fornara and the WFSE filed briefs to complete the record.

On March 20, 2024, Fornara filed motions to reopen hearings in cases 135103-U-22, 136327-U-23, and 136580-U-23c. Fornara asserted that the records should be reopened "due to the discovery of new, critical evidence previously inaccessible through diligent effort."[3] The motion to reopen the hearing in case 135103-U-22 is denied as untimely because the agency closed the case after fully adjudicating the merits of the case and the appeal. On May 1, 2024, the Examiner denied the motion to reopen the hearing in case 136327-U-23. The only case currently before the Commission is case 136580-U-23c.

ANALYSIS

The Motion to Reopen the Hearing Is Denied

"Once a hearing has been declared closed, it may be reopened only upon the timely motion of a party that discovered new evidence which could not with reasonable diligence have been discovered and produced at the hearing." WAC 391-45-270(2). Fornara has not explained why she was unable to discover and produce the evidence in opposition to the motion for summary judgment. Fornara's motion is also untimely. The motion was filed after the record had been closed. *Kiona Benton School District (Kiona Benton Education Association)*, Decision 11862-A (EDUC, 2014) (dismissing a motion to reopen the hearing after the union had appealed the Examiner's decision). The motion to reopen the record in case 136580-U-23c is denied.

Summary Judgement as Appropriate

The standard of review on summary judgment is *de novo*. *Washington Federation of State Employees v. State*, 127 Wn.2d 544, 551 (1995). On review, the Commission performs the same inquiry as the Examiner. *Freedom Foundation v. Gregoire*, 178 Wn.2d 686, 694 (2013). On appeal, the issue is whether there are any genuine issues of material fact which would contravene

[3] Motion to reopen hearings, p. 1.

the motion for summary judgment. *Jacobsen v. State*, 89 Wn.2d 104, 108 (1997). When determining whether summary judgment is appropriate, the Commission considers "all facts and make[s] all reasonable factual inferences in the light most favorable to the nonmoving party." *Scrivener v. Clark College*, 118 Wn.2d 439, 444 (2014).

Summary judgment is properly granted if there are no issues of material fact and if the moving party is entitled to judgment as a matter of law. *Washington Federation of State Employees v. State*, 127 Wn.2d at 551; WAC 10-08-135; *Kiona Benton School District (Kiona Benton Education Association)*, Decision 11862-A. A material fact is one upon which the outcome of the litigation depends. *Clements v. Travelers Indem. 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 only if, from all the evidence, a reasonable person could reach but one conclusion. *Id*.

On appeal, Fornara asserted that issues of material facts existed. We agree with the Examiner that no issues of material fact exist.

The WFSE Did Not Breach Its Duty of Fair Representation by Failing to Advance Fornara's Grievances

The WFSE did not breach its duty of fair representation by failing to advance Fornara's grievances to arbitration. The evidence in the record supports the Examiner's finding that there were two grievances filed within the statute of limitations period from February 28, 2022, through August 30, 2022: the March 15, 2022, draft grievance in response to disciplinary action against Fornara and the July 21, 2022, grievance about Fornara's reduction in pay.

Assuming all facts in the light most favorable to Fornara, no genuine issue of material fact exists as to whether the union breached its duty of fair representation by not advancing grievances to arbitration. A union may choose not to file a grievance or advance a grievance to arbitration, provided it acts without a discriminatory motive and not arbitrarily or in bad faith. *City of Seattle*

(Seattle Police Officers' Guild), Decision 11291-A (PECB, 2012). Simply alleging that discriminatory intent exists does not create a question of material fact.

The WFSE followed its procedures for considering grievances, and Fornara chose not to engage with the WFSE's internal procedures. Under the WFSE's policy for processing grievances, local grievance committees decide whether to file and advance a grievance through the internal top step of the grievance procedure.[4] At Fornara's request, WFSE representative Gus Gonzalez drafted the March 15, 2022, grievance. Gonzalez presented the grievance to the local grievance committee. Although afforded the opportunity, Fornara did not participate in the meeting.[5] On March 17, 2022, Gonzalez notified Fornara of the local grievance committee's decision not to advance the grievance. Fornara did not appeal the decision; rather, on April 4, 2022, she sent an email to the WFSE alleging collusion and complaining about its conduct.

On July 21, 2022, Tawny Brown, another WFSE representative, filed a grievance on Fornara's behalf. Brown represented Fornara in meetings with the employer. On October 28, 2022, the employer partially granted the requested grievance remedy. Fornara was not satisfied with the outcome[6] and asked Brown to advance the grievance to arbitration.[7] Brown presented Fornara's grievance to the WFSE's statewide grievance committee, which was responsible for deciding if grievances should be advanced to arbitration.[8] On November 10, 2023, the WFSE notified Fornara that the statewide grievance committee would hear the grievance on November 18, 2022. Brown

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4 Declaration of Tawny Brown, exhibit (Ex.) 1, p. 1.

5 Declaration of Tawny Brown, p. 3.

6 Response filed by Fornara October 17, 2023, p. 481-482; declaration of Tawny Brown, p. 4.

7 Declaration of Tawny Brown, p. 4.

8 Declaration of Tawny Brown, p. 2.

scheduled time to meet with Fornara before the statewide grievance committee met. The statewide grievance committee determined that it would not advance the grievance to arbitration.[9]

Fornara steadfastly maintained that she would not participate in union activities, including review of her grievances, outside of working hours and, against the union's objection and guidance, insisted on communicating with the union through her employer-provided email. Employees must exhaust their remedies under the collective bargaining agreement before commencing legal action against their exclusive bargaining representatives. *See Othello School District (PSE of Washington)*, Decision 3037 (PECB, 1988) (citing *Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965); *Vaca v. Sipes*, 386 U.S. 171 (1967)). In this case, Fornara did not participate in either the local grievance committee or the statewide grievance committee review of her grievances. Her refusal to participate does not render the WFSE's decisions not to advance her grievances a breach of the duty of fair representation.

We affirm the Examiner. The collective bargaining statutes do not require a union to accomplish the goals of each bargaining unit member. *Dayton School District (Dayton Education Association)*, Decision 8042-A (EDUC, 2004). The evidence Fornara provided establishes that the WFSE filed grievances on her behalf, obtained settlements favorable to her, and considered—but rejected with reason—filing the March 15, 2022, grievance, and advancing the July 21, 2022, grievance to arbitration. Fornara's dissatisfaction with the WFSE's decisions neither creates an issue of material fact nor supports a finding that the WFSE breached its duty of fair representation.

The Union Did Not Breach Its Duty of Fair Representation by Failing to Respond to Fornara's Request for Information

The Examiner concluded that the WFSE did not breach its duty of fair representation when it did not respond to Fornara's July 19, 2022, request for information. *Washington State Department of Children, Youth, and Families (Washington Federation of State Employees)*, Decision 13774. Confusion existed around the request because Fornara labeled the request a

[9] Response filed by Fornara October 17, 2023, p. 413.

"public disclosure request." *Id*. at 14-15. Once the request was clarified, the WFSE responded. *Id*. at 16.

The Examiner identified the correct legal standard for determining whether a union breached its duty of fair representation in responding to a request for information from a bargaining unit employee.[10] We agree that the WFSE's response was within the "wide range of reasonableness"[11] and was not irrational. We affirm the Examiner.

The Union Did Not Retaliate Against Fornara for Filing an Unfair Labor Practice Complaint

On appeal, Fornara argued that a causal connection existed between her protected activity of filing unfair labor practice complaints against the Office and Professional Employees International Union (OPEIU) Local 8 in 2016 and the WFSE on August 30, 2022, and the WFSE's failure to advance her grievances. Fornara established that she was deprived of an ascertainable right, benefit, or status by showing that the WFSE did not file the draft March 15, 2022, grievance or pursue the July 21, 2022, grievance to arbitration. We agree with the Examiner that no causal connection exists between Fornara filing unfair labor practice complaints in 2016 and 2022 and the WFSE not advancing her grievances. We affirm the Examiner's conclusion that Fornara has not established a prima facie case of discrimination in retaliation for filing unfair labor practice complaints.

ORDER

Finding of fact 2 is modified to correct the spelling of Ms. Fornara's name.

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[10] This case is the first time the Commission has been presented with the question of what standard to apply when determining whether a union breached its duty of fair representation in responding to a request for information. We decline to adopt the standard of *Letter Carriers Branch* 529, 319 NLRB 879 (1995) applied by Examiners in *East Valley School District – Spokane*, Decision 13114 (PECB, 2019) and *Spokane School District (Spokane Education Association)*, Decision 13619 (EDUC, 2023).

[11] *Washington State Department of Children, Youth, and Families (Washington Federation of State Employees)*, Decision 13774, at 17.

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

The findings of fact, conclusions of law, and order issued by Examiner Page Todd are AFFIRMED and adopted as the findings of fact, conclusions of law, and order of the Commission.

ISSUED at Olympia, Washington, this 15th day of May, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARK LYON, Chairperson

MARK BUSTO, Commissioner

ELIZABETH FORD, Commissioner