

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 13876 - PSRA

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Anjelita Longoria Fornara, the complainant.

Cheryl L. Wolfe, Senior Counsel, 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 (ULP) complaint against the Washington State Department of Children, Youth, and Families (DCYF or employer). A cause of action and partial deficiency notice was issued on May 3, 2023, finding employer discrimination under RCW 41.80.110(1)(d) by retaliating against Fornara for filing an unfair labor practice complaint but finding a deficiency for the complainant's interference allegation relating to her Weingarten rights in connection with an investigatory interview. The Unfair Labor Practice Administrator issued a decision dismissing the complainant's deficient Weingarten allegation. On May 23, 2023, the employer filed its answer. On August 31, 2023, the employer filed a motion for summary judgment, which I subsequently denied. I held a hearing on January 9, 2024. The parties submitted post-hearing briefs to complete the record. The complainant filed a motion to reopen the hearing on March 20, 2024, which I denied.

ISSUE

The issue presented is whether the employer discriminated against Fornara in violation of RCW 41.80.110(1)(d) for filing an unfair labor practice complaint and later by reducing Fornara's pay on March 22, 2023.

The complainant was unable to prove discrimination. Although the complainant was able to show that she was engaged in protected activity, that she was deprived of an ascertainable benefit, and that there was a causal connection between the protected activity and the employer's actions, the employer was able to provide a legitimate, nondiscriminatory reason for Fornara's discipline. Fornara was unable to prove that the employer's reasons for its disciplinary actions were pretextual.

BACKGROUND

Procedural

Fornara submitted a subpoena request for witness testimony on December 7, 2023. Fornara only provided a list of names and their corresponding email addresses with no specific reason for wanting to call these witnesses. I held a Zoom meeting on December 14, 2023, explaining the law under WAC 391-08-310 and that I would only issue a subpoena after the complainant specifically stated the reasons for wanting to call these witnesses in relation to the case. In response, Fornara explained why documentation from a few of the individuals listed was of importance but not the importance of the witness testimony. I denied the subpoena request for the requested witnesses due to a lack of specificity.

Fornara also requested subpoenas for records from the employer. She concurrently filed a public records request for the same documents. The employer was able to provide over 2,000 pages of documentation in response to the records request. The first set of documents the employer delivered to Fornara came on December 21, 2023. The rest of the documents were delivered by January 2, 2024. The documents that Fornara requested through the public records request were the same documents she requested by subpoena. To avoid unnecessary duplicity, I denied Fornara's subpoena duces tecum request.

Facts

Fornara was employed by the DCYF as a Social Service Specialist 3 (SSS3) in the Yakima, Washington office. While employed as an SSS3, Fornara accumulated an extensive disciplinary history with the employer.

On April 28, 2021, Fornara received a memo of concern from Area Administrator (AA) Claudia Rocha for unprofessionalism towards her supervisor, Skie Morales.

On September 2, 2021, Morales sent Fornara an email identifying an error in Fornara's work and explaining how to avoid future issues. In response, Fornara wrote back on September 13, 2021,

Skie as you continue to comment on picayune matters . . . you should be concentrating your efforts on the other inferior reports compared to mine and the inept supervisors who are closing them. . . . Since management does not want to give me credit where credit is due and only promote sycophants with no prior experience compared to me, I must pat my own back knowing that I'm enduring disparate treatment orchestrated by management Several prior supervisors and an AA informed me of upper management's diabolical intentions towards me. . . .

On September 9, 2021, Morales sent Fornara an email asking her to complete a second interview of a child to assess further concerns of child safety and abuse. Fornara's responses on September 13, 2021, included comments such as "[t]his is redundant and not necessary," "[f]eel free to interview him yourself if you think he will change his story," and "[a]re you asking me to put my life in danger?". These remarks were included as part of the basis for the written reprimand.

On January 28, 2022, Fornara received a written reprimand for three separate charges, including being disrespectful and unprofessional with a DCYF client. When asked if Fornara remembered this particular document, the complainant testified, "Just you showing me that right now, those all look familiar. I must have received 10, 15 of those written. . . . I've received many, many reprimands."

On April 11, 2022, the employer produced a formal administrative investigation report detailing the three allegations of Fornara's unprofessional and inappropriate behavior. The allegations detailed Fornara acting in an unprofessional and disrespectful manner to her supervisor, not following her supervisor's directives to correct unprofessional documentations in Fornara's case note entries, and documenting case activity in an unprofessional and inappropriate manner.

On June 2, 2022, Fornara received another written reprimand for using placeholders in case notes and refusing directions from her supervisor, Kimberly Hawkins.

On November 15, 2022, Fornara received a performance evaluation for September 1, 2021, through August 30, 2022. The feedback from Hawkins in the evaluation indicated that Fornara met all performance expectations except for the professionalism requirement.

On September 5, 2022, investigations into more of Fornara's conduct-related violations began because management learned that Fornara may have asked a prior client to write a complaint letter about a fellow social worker. Additional allegations were added later into the investigation based on a formal complaint by management.

On September 29, 2022, Fornara sent out a state-wide email concerning her grievances against the employer, which included the ULP complaints that she had filed with the Public Employment Relations Commission (PERC), staff retention issues, and assignment pay negotiations. The employer conducted an administrative investigation and requested access to the complainant's email. Fornara responded to the request on September 26, 2022, saying it was a "waste of . . . time as [Dorene Perez's] intent is only retaliation." Dorene Perez is the Deputy Assistant Secretary of Child Welfare for the employer.

The employer completed the investigation and issued a report on December 5, 2022. Fornara had an opportunity for an in-person interview but instead wrote a response to the investigator's questions. Fornara also received a "notice of pre-disciplinary meeting" on February 7, 2023, listing the charges. The first charge in the investigation was for failure to meet performance expectations by failing to promptly comply with IT requests regarding a public records request. There was also a long back and forth where the employer attempted to gain access to Fornara's phone, which culminated in Fornara stating in an August 25, 2022, email, "It is unnecessary to keep wasting state resources and time sending information about apparent matters as if I am still a new employee, like you are trying to abase me." The second charge was for disrespectful and unprofessional documentation and correspondence with a client. Both charges were upheld, and Fornara was given a temporary reduction in pay starting from March 22, 2023.

In emails sent to Hawkins on March 10, 2023, Fornara used an unprofessional and disrespectful tone in many instances. Fornara wrote to Hawkins that she hopes Hawkins is not playing into the employer's retaliation against her because it is illegal and unethical. Fornara wrote that Hawkins'

voice “quivers” when speaking to Fornara, which makes Fornara assume Hawkins is being unjust in her practices.

Before the issuance of the reduction in pay on March 22, 2023, Fornara had received another reduction in pay on June 2, 2022, for communication that was disrespectful, inappropriate, and unnecessary. On October 28, 2022, that charge had been lessened in a step 3 response letter by removing the notice of reduction of pay and reducing the discipline to a written reprimand for one charge. Fornara was allocated backpay for the amount that had been deducted from her pay.

ANALYSIS

Applicable Legal Standards

Discrimination

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee’s exercise of statutorily protected rights. RCW 41.56.140(1); *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in a discrimination case. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 348 (2014) (citing *Wilmot v. Kaiser Aluminum & Chemical Corp.*, 118 Wn.2d 46 (1991)). To prove discrimination, the complainant must first establish a prima facie case by showing the following:

1. The employee participated in protected activity or communicated to the employer an intent to do so;
2. The employer deprived the employee of some ascertainable right, benefit, or status; and
3. A causal connection exists between the employee’s exercise of a protected activity and the employer’s action.

Id. Ordinarily, an employee may use circumstantial evidence to establish the prima facie case because respondents do not typically announce a discriminatory motive for their actions. *Wilmot v. Kaiser Aluminum and Chemical Corp.*, 118 Wn.2d at 69. Circumstantial evidence consists of proof of facts or circumstances that according to common experience give rise to a reasonable

inference of the truth of the fact sought to be proved. *See Seattle Public Health Hospital (AFGE Local 1170)*, Decision 1911-C (PECB, 1984).

If the complaining party establishes a prima facie case, the burden of production shifts to the respondent. *Port of Tacoma*, Decision 4626-A (PECB, 1995). The respondent may articulate a legitimate, nondiscriminatory reason for the adverse employment action. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349. The respondent bears the burden of production, not of persuasion. *Id.* If the respondent meets its burden of production, the complainant bears the burden of persuasion to show that the employer's stated reason was either pretext or that union animus was a substantial motivating factor for the employer's actions. *Id.*

Application of Standards

For the complainant to establish a prima facie case for a discrimination charge, three elements must be met. First, the employee must have participated in protected union activity. In the present case, the complainant argues that her protected activity was her participation in an unfair labor practice hearing on December 19 and 20, 2022.¹ The complainant meets this element. Protected activity includes filing a grievance or unfair labor practice complaint. *See Mukilteo School District*, Decision 5899-A (PECB, 1997). Participation in a ULP hearing is considered protected activity and establishes the first element.

The next element needed to prove a prima facie case for discrimination is establishing that the employer deprived the employee of an ascertainable right, benefit, or status. Discharge and all forms of discipline constitute a denial of benefits. In the present case, the employer issued a reduction in pay to Fornara on March 22, 2023. This is a deprivation of an ascertainable benefit.

The last element needed to establish a claim for discrimination is a causal connection existing between the employee's exercise of a protected activity and the employer's action. An employee may establish the requisite connection by showing that the adverse action followed the employee's known exercise of a protected right under circumstances from which one can reasonably infer a

¹ *Washington State Department of Children, Youth, and Families*, Decision 13647 (PSRA, 2023).

connection. *Port of Tacoma*, Decision 4626-A; *City of Winlock*, Decision 4784-A (PECB, 1995). An Examiner may rely upon circumstantial evidence because employers are not in the habit of announcing retaliatory motives. *Wilmot v. Kaiser Aluminum and Chemical Corp.*, 118 Wn.2d 46, at 69.

The timing of an adverse action can serve as circumstantial evidence of a causal connection between the employer's actions and the employee's union activity. In the present case, Fornara participated in a ULP hearing against the employer on December 19 and 20, 2022. Fornara's reduction in pay came only a few months later on March 22, 2023. Fornara is able to meet this element by showing the close proximity in timing of her participation in the ULP hearing and subsequent reduction in pay.

Since Fornara establishes a prima facie case, the burden of production shifts to the employer. Here, the employer needs to articulate a legitimate, nondiscriminatory reason for the adverse employment action. 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. *Educational Service District 114*, Decision 4361-A.

In the present case, the employer provided a non-pretextual reason for the reduction in pay through Fornara's evaluation and lengthy history and record of disciplinary actions that appear to follow a step progression. Fornara received below standard marks in her 2021-2022 performance evaluation regarding her professional conduct. In Fornara's 2021-2022 performance evaluation Hawkins wrote, "Fornara displayed a pattern of unprofessional communications towards her supervisors. Ms. Fornara displayed a pattern of stating inappropriate personal statements an[d] information in case documentation . . . Ms. Fornara failed to correct the behavior to adhere to professional and documentation standards, which ultimately resulted in disciplinary actions." During the hearing, the employer produced evaluations from three other employees that held the same SSS3 position as Fornara. All evaluation metrics were identical to those that were used for Fornara, including performance expectations for professional conduct.

The employer can show that Fornara's interactions with her supervisors gave cause for disciplinary action following a step progression which led to her reduction in pay. "[T]here is no question

employers have a legitimate managerial interest in preventing workplace discrimination or harassment. When an employer investigates and disciplines an employee for engaging in discriminatory or harassing behavior, the employer must follow the discipline and grievance procedures outlined in an applicable collective bargaining agreement.” *City of Seattle*, Decision 12060-A (PECB, 2014).

In this case, Fornara has a long history of unprofessional workplace conduct that resulted in disciplinary action. On April 28, 2021, Fornara received a memo of concern from the Area Administrator for unprofessional conduct towards Fornara’s supervisor. On January 28, 2022, Fornara received a written reprimand for unprofessional communication towards her supervisor. On April 11, 2022, the employer issued findings from an administrative investigation regarding three allegations of unprofessional and disrespectful conduct Fornara had exhibited towards her supervisor. Fornara received a written reprimand and pay reduction for refusing directions from her supervisor on June 2, 2022. On October 28, 2022, the pay reduction discipline was reduced to a written reprimand. Fornara received a performance evaluation on November 15, 2022, which included negative feedback on her professional conduct. On March 22, 2023, Fornara received a reduction in pay. Fornara’s history of repeated unprofessional conduct violations and subsequent disciplinary actions demonstrate that the employer had a legitimate, nondiscriminatory reason for reducing Fornara’s pay in March 2023.

If the respondent can provide a legitimate, nondiscriminatory reason for its actions against the complainant, the burden then shifts to the complainant to show union animus or that the reason was pretextual. Fornara states in her complaint that the interview conducted by two state Administrative Investigators on October 31, 2022, regarding the statewide email she sent on September 29, 2022, became an intense interrogation. Fornara further argues that she felt Perez showed animosity towards her and created a hostile working environment. Fornara believes that her November 15, 2022, performance evaluation used metrics that were different from those of coworkers performing the same job. Fornara feels she has experienced various undesirable working conditions, “such as delayed case closures, disputes over irrelevant matters, and preferential treatment of other employees in terms of teleworking options, overtime pay, and

referrals for advancement and training.” Fornara believes she was being targeted and that her work environment would lead to a constructive termination.

The complainant did not meet her burden to show that the employer acted out of union animus or that its reasons were pretextual. First, Fornara did not argue that the employer’s actions were motivated by union animus. Second, Fornara did not provide persuasive evidence that the disciplinary actions that the employer took were pretextual. The employer provided evidence of a long history of disciplinary action that increased in severity over time, which is how disciplinary step progression should occur. Fornara lacked appreciation for the severity of her disciplinary situation and stated at hearing that she was unable to identify a particular written reprimand because she had “received 10, 15 of those written . . . reprimands.” When cross-examined by the employer’s attorney, Fornara’s position was that in every instance of discipline and in every administrative investigation, the employer had lied about her. Fornara argued that disciplinary actions were taken against her for retaliatory reasons but is unable to prove this belief or that the employer’s reasons for discipline were pretextual.

CONCLUSION

The employer did not discriminate against Fornara in violation of RCW 41.80.110(1)(d) by retaliating against Fornara for filing an unfair labor practice complaint. Filing a ULP complaint is considered protected activity, and Fornara was deprived of an ascertainable benefit when the employer reduced her pay. Fornara was able to make a prima facie for discrimination by highlighting the timing of her ULP complaint filing with her subsequent reduction in pay discipline. However, the employer was able to provide a legitimate, nondiscriminatory reason for its actions by showing Fornara’s long history of discipline, and Fornara was unable to prove that the employer’s reasons for its disciplinary actions were pretextual. The complaint is dismissed.

FINDINGS OF FACT

1. The Washington State Department of Children, Youth, and Families (employer) is a public employer within the meaning of RCW 41.80.005(8).

2. Anjelita Longoria Fornara is a public employee as defined by RCW 41.80.005(6).
3. Fornara was employed by the employer as a Social Service Specialist 3 (SSS3) in the Yakima, Washington office. While employed as an SSS3, Fornara accumulated an extensive disciplinary history with the employer.
4. On April 28, 2021, Fornara received a memo of concern from Area Administrator (AA) Claudia Rocha for unprofessionalism towards her supervisor, Skie Morales.
5. On September 2, 2021, Morales sent Fornara an email identifying an error in Fornara's work and explaining how to avoid future issues. In response, Fornara wrote back on September 13, 2021,

Skie as you continue to comment on picayune matters . . . you should be concentrating your efforts on the other inferior reports compared to mine and the inept supervisors who are closing them. . . . Since management does not want to give me credit where credit is due and only promote sycophants with no prior experience compared to me, I must pat my own back knowing that I'm enduring disparate treatment orchestrated by management. . . . Several prior supervisors and an AA informed me of upper management's diabolical intentions towards me. . . ."

6. On September 9, 2021, Morales sent Fornara an email asking her to complete a second interview of a child to assess further concerns of child safety and abuse. Fornara's responses on September 13, 2021, included comments such as "[t]his is redundant and not necessary," "[f]eel free to interview him yourself if you think he will change his story," and "[a]re you asking me to put my life in danger?". These remarks were included as part of the basis for the written reprimand.
7. On January 28, 2022, Fornara received a written reprimand for three separate charges, including being disrespectful and unprofessional with a DCYF client. When asked if Fornara remembered this particular document, she testified, "Just you showing me that right now, those all look familiar. I must have received 10, 15 of those written. . . . I've received many, many reprimands."
8. On April 11, 2022, the employer produced a formal administrative investigation report detailing the three allegations of Fornara's unprofessional and inappropriate behavior. The

allegations detailed Fornara acting in an unprofessional and disrespectful manner to her supervisor, not following her supervisor's directives to correct unprofessional documentations in Fornara's case note entries, and documenting case activity in an unprofessional and inappropriate manner.

9. On June 2, 2022, Fornara received another written reprimand for using placeholders in case notes and refusing directions from her supervisor, Kimberly Hawkins.
10. On November 15, 2022, Fornara received a performance evaluation for September 1, 2021, through August 30, 2022. The feedback from Hawkins in the evaluation indicated that Fornara met all performance expectations except for the professionalism requirement.
11. On September 5, 2022, investigations into more of Fornara's conduct-related violations began because management learned that Fornara may have asked a prior client to write a complaint letter about a fellow social worker. Additional allegations were added later into the investigation based on a formal complaint by management.
12. On September 29, 2022, Fornara sent out a state-wide email concerning her grievances against the employer, which included the ULP complaints that she had filed with the Public Employment Relations Commission (PERC), staff retention issues, and assignment pay negotiations.
13. The employer conducted an administrative investigation and requested access to the complainant's email. Fornara responded to the request on September 26, 2022, saying it was a "waste of . . . time as [Dorene Perez's] intent is only retaliation." Dorene Perez is the Deputy Assistant Secretary of Child Welfare for the employer.
14. The employer completed the investigation and issued a report on December 5, 2022. Fornara had an opportunity for an in-person interview but instead wrote a response to the investigator's questions.
15. Fornara received a "notice of pre-disciplinary meeting" on February 7, 2023, listing the charges. The first charge in the investigation was for failure to meet performance

expectations by failing to promptly comply with IT requests regarding a public records request.

16. There was also a long back and forth where the employer attempted to gain access to Fornara's phone, which culminated in Fornara stating in an August 25, 2022, email, "It is unnecessary to keep wasting state resources and time sending information about apparent matters as if I am still a new employee, like you are trying to abase me."
17. The second charge was for disrespectful and unprofessional documentation and correspondence with a client. Both charges were upheld, and Fornara was given a temporary reduction in pay starting from March 22, 2023.
18. In emails sent to Hawkins on March 10, 2023, Fornara used an unprofessional and disrespectful tone in many instances. Fornara wrote to Hawkins that she hopes Hawkins is not playing into the employer's retaliation against her because it is illegal and unethical. Fornara wrote that Hawkins' voice "quivers" when speaking to Fornara, which makes Fornara assume Hawkins is being unjust in her practices.
19. Before the issuance of the reduction in pay on March 22, 2023, Fornara had received another reduction in pay on June 2, 2022, for communication that was disrespectful, inappropriate, and unnecessary.
20. On October 28, 2022, that charge had been lessened in a step 3 response letter by removing the notice of reduction of pay and reducing the discipline to a written reprimand for one charge. Fornara was allocated backpay for the amount that had been deducted from her pay.

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.

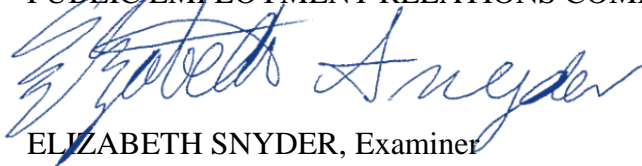
2. By its actions described in findings of fact 3-20, the employer did not discriminate against Fornara in violation of RCW 41.80.110(1)(d) by retaliating against Fornara for filing an unfair labor practice complaint.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter[s] is dismissed.

ISSUED at Olympia, Washington, this 13th day of June, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "Elizabeth Snyder", is written over the printed name.

ELIZABETH SNYDER, 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.