

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ANJELITA LONGORIA FORNARA, Complainant, vs. WASHINGTON FEDERATION OF STATE EMPLOYEES, Respondent.	CASE 138764-U-24, 139114-U-24 DECISION 13876-A - PSRA DECISION OF COMMISSION
ANJELITA LONGORIA FORNARA, Complainant, vs. WASHINGTON STATE DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES, Respondent.	CASE 136327-U-23, 138881-U-24c, 139115-U-24 DECISION 13876-A - PSRA DECISION OF COMMISSION

Anjelita Longoria Fornara, the complainant.

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

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

SUMMARY OF DECISION

On June 26, 2024, Anjelita Longoria Fornara filed a motion for temporary relief in cases 136327-U-23, 136580-U-23c, 138764-U-24, 138881-U-24c, 139114-U-24, and 139115-U-24. On

July 2, 2024, the Washington State Department of Children, Youth, and Families (DCYF) filed a response to the motion for temporary relief. On July 10, 2024, the Washington Federation of State Employees (WFSE) filed a response to the motion for temporary relief. On the same day, Fornara filed a petition for judicial review of the final orders of the Commission and a motion for temporary relief, and on July 11, 2024, Fornara filed a reply to the WFSE's response.

The issue before the Commission is whether the Commission should seek temporary relief for the complainant, Anjelita Fornara, in the superior court. We deny the motion for temporary relief. We address each case in turn.

ANALYSIS

WAC 391-45-430 governs motions for temporary relief. 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 where 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 where 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).

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).

Case 136580-U-23c

On August 30, 2022, Fornara filed an unfair labor practice complaint against the WFSE. The Examiner dismissed the complaint on summary judgment. *Washington State Department of Children, Youth, and Families (Washington Federation of State Employees)*, Decision 13774 (PSRA, 2024). Fornara filed a timely appeal to the Commission.

While the appeal was pending, Fornara filed a motion for temporary relief on March 4, 2024. The Commission dismissed the motion for temporary relief. *Washington State Department of Children, Youth, and Families (Washington Federation of State Employees)*, Decision 13774-A (PSRA, 2024).

The Commission dismissed the appeal on May 15, 2024. *Washington State Department of Children, Youth, and Families (Washington Federation of State Employees)*, Decision 13774-B (PSRA, 2024). Under RCW 34.05.542, a party has 30 days to appeal an agency decision to court. Fornara did not appeal the decision in case 136580-U-23c to court within 30 days. In the absence of an appeal, the agency closed case 136580-U-23c on June 20, 2024.

On June 26, 2024, Fornara filed a motion for temporary relief in case 136580-U-23c after the agency had closed the case. On July 10, 2024, Fornara appealed case 136580-U-23c to Yakima County Superior Court. The appeal is untimely.

Once appeal deadlines have passed, the Commission does not reopen cases. We do not address Fornara's motion for temporary relief in case 136580-U-23c because the Commission closed the case after Fornara did not file a timely appeal to court.

Cases 139114-U-24 and 139115-U-24

On June 10, 2024, Fornara filed unfair labor practice complaints against the DCYF and the WFSE. Those complaints are currently pending before the Unfair Labor Practice (ULP) Administrator. The ULP Administrator has not issued a cause of action statement in either case 139114-U-24 or case 139115-U-24. A motion for temporary relief is not timely if it is filed before the ULP Administrator issues a cause of action statement. WAC 391-45-430(3); *Pierce County*,

Decision 13171 (PECB, 2020). Therefore, the motions for temporary relief in cases 139114-U-24 and 139115-U-24 are dismissed as premature.

Case 136327-U-23

On March 22, 2023, Fornara filed an unfair labor practice complaint against the DCYF. Fornara alleged the DCYF had retaliated against her for filing a previous unfair labor practice complaint. The ULP Administrator issued a cause of action statement and order of partial dismissal. *Washington State Department of Children, Youth, and Families*, Decision 13659 (PSRA, 2023).

On February 9, 2024, Fornara filed a notice of intent to file a motion for temporary relief in case 136327-U-23. On March 4, 2024, Fornara filed a motion for temporary relief. The DCYF filed a response to the motion for temporary relief filed by Fornara in a different case but did not specifically respond to the March 4, 2024, motion for temporary relief. On April 16, 2024, the Commission dismissed the motion for temporary relief. *Washington State Department of Children, Youth, and Families*, Decision 13820 (PSRA, 2024). The Commission concluded that the standard remedies in an unfair labor practice case were adequate to protect Fornara from irreparable harm. *Id.* Fornara did not establish that, if she prevailed on the unfair labor practice complaint, the standard remedy for unlawful discrimination would not be adequate. *Id.* Finally, Fornara did not establish that allowing the administrative process to run its course would cause irreparable harm or would not provide an adequate remedy. *Id.*

Following a January 9, 2024, hearing, Examiner Elizabeth Snyder issued a decision on June 13, 2024. *Washington State Department of Children, Youth, and Families*, Decision 13876 (PSRA, 2024). The issue before the Examiner was whether the DCYF had 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. *Id.* Although Fornara established a prima facie case, the DCYF provided a legitimate, nondiscriminatory reason for disciplining Fornara. *Id.* Fornara did not carry her burden of persuasion to establish that the DCYF's reasons were either a pretext or substantially motivated by union animus. *Id.*

On June 26, 2024, Fornara filed a notice of appeal and a motion for temporary relief in case 136327-U-23. Fornara's appeal of case 136327-U-23 is currently pending before the Commission. On July 2, 2024, the employer responded to the motion for temporary relief. On July 10, 2024, Fornara appealed case 136327-U-23 to Yakima County Superior Court.

In support of her motion for temporary relief, Fornara asserts that "[t]he ongoing dismissal of [her] valid complaints has resulted in irreparable harm, including financial loss, emotional distress, and damage to her professional reputation."¹ Fornara asks the Commission to expedite the case to the superior court and asserts that she has been denied due process.²

In response to the motion for temporary relief, the DCYF argues that the Commission should apply *res judicata* because the issue of whether temporary relief is warranted in case 136327-U-23 has previously been decided. Additionally, the employer argues WAC 391-45-350 (appeals) and WAC 391-45-430 (temporary relief) do not afford the remedy of temporary relief during the appeal of an agency order.

Fornara has not offered any new evidence explaining how she is without a "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). The only change in this case is the issuance of the Examiner's decision. We deny Fornara's motion for temporary relief in case 136327-U-23.

Case 138764-U-24

On March 12, 2024, Fornara filed an unfair labor practice complaint against the WFSE. In it, Fornara alleged that on February 5, 2024, a WFSE representative had sent her a no merit letter stating that the WFSE would not pursue Fornara's grievances. Fornara subsequently realleged facts that have been decided by Examiners and the Commission.

¹ Notice of Appeal and Motion for Temporary Relief at 5.

² *Id.*

In response to the March 12, 2024, unfair labor practice complaint against the WFSE, on May 2, 2024, the ULP Administrator issued a cause of action for

[u]nion discrimination in violation of RCW 41.80.110(2)(c) [and if so derivative interference in violation of RCW 41.80.110(1)(a)] within six months of the date the complaint was filed, by retaliating against Anjelita Longoria Fornara for filing an unfair labor practice complaint.

Case 138764-U-24 is currently assigned to an Examiner.

Fornara included case 138764-U-24 in the list of cases in the motion for temporary relief. On July 10, 2024, the WFSE responded to the motion for temporary relief. The WFSE argues that Fornara did not adequately support her motion for temporary relief and failed to demonstrate that the Commission's remedies would be inadequate. On July 10, 2024, Fornara filed an appeal and motion for temporary relief in Yakima County Superior Court for case 138764-U-24, and on July 11, 2024, Fornara filed a reply to the employer's response.

Fornara has not offered any evidence to establish that she is without a "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). Fornara has not specifically addressed the issue in case 138764-U-24 or how the WFSE not processing her grievance is causing irreparable harm. We deny the motion for temporary relief in case 138764-U-24.

Case 138881-U-24c

Case 138881-U-24c is a consolidated case. Fornara filed unfair labor practice complaints against the DCYF on December 6, 2023 (case 138047-U-23) and March 12, 2024 (case 138765-U-24). Case 138881-U-24c is currently pending before an Examiner.

Pre-consolidation Motion for Temporary Relief in Case 138047-U-23

On February 9, 2024, Fornara filed a written notice of intent to file a motion for temporary relief in case 138047-U-23. On February 26, 2024, Fornara filed a motion for temporary relief. On March 4, 2024, Fornara filed a second motion for temporary relief. The Commission dismissed

the motions for temporary relief. *Washington State Department of Children, Youth, and Families*, Decision 13819 (PSRA, 2024). The Commission concluded that Fornara had failed to establish that she was without an adequate remedy or would suffer irreparable harm.

Post-consolidation

In response to the March 12, 2024, unfair labor practice complaint, the ULP Administrator issued a cause of action statement on April 23, 2024, finding a cause of action existed for the following issues:

Employer discrimination in violation of RCW 41.80.110(c) [and if so derivative interference in violation of RCW 41.80.110(1)(a)] within six months of the date the complaint was filed, by retaliating against Anjelita Longoria Fornara for filing an unfair labor practice complaint.

Employer discrimination in violation of RCW 41.80.110(c) [and if so derivative interference in violation of RCW 41.80.110(1)(a)] within six months of the date the complaint was filed, by retaliating against Anjelita Longoria Fornara for her exercise of protected activity.

The ULP Administrator consolidated cases 138047-U-23 and 138765-U-24 in case 138881-U-24c.

On June 26, 2024, Fornara filed a motion for temporary relief in case 138881-U-24c. In response, the DCYF acknowledges that while Fornara filed a motion for temporary relief in case 138047-U-23, which the Commission denied, Fornara has not previously filed a motion for temporary relief in case 138765-U-24. The DCYF asserts that because the Commission decided on the motion for temporary relief in case 138047-U-23, the question of whether temporary relief is appropriate has been addressed. The DCYF requests that the Commission apply *res judicata* to the motion in this consolidated case. On July 10, 2024, Fornara filed an appeal and motion for temporary relief in Yakima County Superior Court in case 138881-U-24c.

Fornara has not explained how she is without an adequate legal remedy or will suffer irreparable harm. Should the Examiner find that the DCYF discriminated against Fornara, the Commission has the authority to award reinstatement, backpay, and a make whole remedy. We deny the motion for temporary relief.

ORDER


The motion for temporary relief is DENIED.

ISSUED at Olympia, Washington, this 6th day of August, 2024.

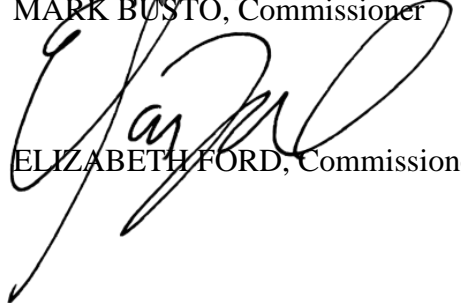
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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MARK LYON, Chairperson

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MARK BUSTO, Commissioner

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ELIZABETH FORD, Commissioner