

Washington State Department of Children, Youth, and Families (Washington Federation of State Employees), Decision 13774-A (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-A - PSRA DECISION OF COMMISSION ON MOTION FOR TEMPORARY RELIEF

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 issue is whether the Commission should seek 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 August 30, 2022, Anjelita Fornara filed unfair labor practice (ULP) complaints against the Washington Federation of State Employees (WFSE). On September 2, and November 1 and 7, 2022, Fornara filed amended complaints. Fornara alleged the WFSE breached its duty of fair representation by not advancing her grievances and that the WFSE had discriminated against her for filing unfair labor practice complaints. The ULP Administrator found a cause of action existed on November 30, 2022.¹

On March 22, 2023, Fornara filed another 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 her intent to file a motion for temporary relief. On February 12, 2024, Fornara appealed the Examiner's decision. The appeal is currently pending before the Commission.

On March 4, 2024, Fornara filed a motion for temporary relief and motion for summary judgment with supporting affidavits. Fornara included all the pending case numbers. The WFSE did not respond to the motion for temporary relief.

¹ 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."

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 March 4, 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 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 compel the WFSE to arbitrate or defend Fornara against her employer. 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 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). The Commission's remedial authority, including make-whole remedies, apply equally in unfair labor practice complaints filed against unions. *See generally Municipality of Metropolitan Seattle (METRO) (ATU Local 587)*, Decision 2746-B (PECB, 1990). 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 would not be an adequate remedy.

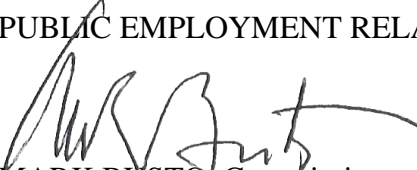
In her affidavit, Fornara asserts, "the slow pace of these unfair labor charges cannot adequately protect me from immediate and ongoing harm inflicted by" the WFSE. The time necessary for the Commission to process an unfair labor practice complaint has been found to be insufficient to establish irreparable 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