

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY,	)	
	)	
Employer.	)	
-----	)	
DIANE REEDER,	)	CASE 14415-U-99-3571
	)	
Complainant,	)	DECISION 7108-A - PECB
	)	
vs.	)	
	)	
AMALGAMATED TRANSIT UNION,	)	
LOCAL 586,	)	DECISION OF COMMISSION
	)	
Respondent.	)	
_____	)	

Diane Reeder, appeared pro se.

Mary E. Roberts, Attorney at Law, appeared on behalf of the respondent.

This case comes before the Commission on an appeal filed by Diane Reeder, seeking to overturn the Findings of the Fact, Conclusions of Law and Order issued by Examiner Mark S. Downing.<sup>1</sup> We affirm; the appeal is dismissed.

BACKGROUND

On February 24, 1999, Diane Reeder filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that Amalgamated

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<sup>1</sup> King County, Decision 7108 (PECB, 2000).

Transit Union, Local 587 (union), had violated RCW 41.56.150(1) and (3) in connection with Reeder's employment by King County. The Executive Director issued a preliminary ruling on June 15, 1999, finding a cause of action to exist.

A hearing was held on September 29, 1999, before Examiner Mark S. Downing. On the basis of the evidence presented at the hearing, and the record as a whole, the Examiner concluded that Reeder had not met her burden of proof that the union has discriminated against her or interfered with her statutory rights in violation of Chapter 41.56 RCW. The complaint was dismissed. On July 18, 2000, Reeder filed an appeal with the Commission. The Commission never received an appeal brief from the union, and on August 28, 2000, the Executive Director wrote a letter to the employer and union stating that if either desired to contest the sufficiency of service, they should provide written notice to Reeder and the Executive Director within ten days. On September 7, 2000, counsel for the union responded by stating that neither she nor her client received a copy of any notice of appeal and, therefore, desired the appeal be dismissed.<sup>2</sup>

On September 19, 2000, Reeder responded to the union's letter asserting that she did send the union counsel a copy of her appeal through regular mail. Reeder has not provided proof of service to the Commission, however.

#### POSITIONS OF THE PARTIES

The union contends that the Executive Director's August 28, 2000, letter informed it, for the first-time, that Reeder had filed an

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<sup>2</sup> The employer was not named as a respondent.

appeal, and that it never received the copy of any notice of appeal. The union asserts that because Reeder was informed of the service requirement and because there has been no service on the appeal, it should be dismissed.

Reeder argues that she sent copies of her appeal to the union through regular mail.

## DISCUSSION

### Legal Standards

The collective-bargaining statutes administered by the Commission establish administrative procedures for bringing an orderly resolution to disputes. See Chapter 41.56 RCW. Through its rule-making authority, the Commission has adopted specific rules to effectuate such resolution. See Chapter 391-08 and 391-45 WAC.

The Examiner's decision clearly stated: "This order will be the final order of the agency unless the notice of appeal is filed with the commission under WAC-391-45-350." WAC 391-45-350(4) requires the following:

(4) The original and three copies of a notice of appeal or notice of cross-appeal shall be filed at the commission's Olympia office as required by WAC 391-08-120 (1), and **copies shall be served on all other parties as required by WAC 391-08-120 (3) and (4).**

[Emphasis by **bold** supplied.]<sup>3</sup>

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<sup>3</sup> The rule is set forth here as it existed at the time relevant to this case. It has since been amended.

WAC 391-08-120(3), governing service on other parties, reads as follows:

(3) A party which files or submits any papers to the agency **shall serve a copy of the papers upon all counsel and representatives of record, and upon all parties not represented by counsel or upon their agents designated by them or by law.** Service shall be completed no later than the date of filing or submission under subsection (1) or (2) of this section, by one of the following methods:

. . . .  
(b) Service may be made by first-class, registered, or certified mail, and shall be regarded as completed upon deposit in the United States mail properly stamped and addressed.

[Emphasis by **bold** supplied.]<sup>4</sup>

WAC 391-08-120(4), governing proof of service, reads as follows:

(4) **On the same date** that service of any papers is completed under subsection (3) of this section, **the person who completed the service shall:**

. . . .  
(c) **Make a certificate** stating that the person signing the certificate completed service of the papers by:

(I) Mailing a copy under subsection (3)(b) of this section; or

[Emphasis by **bold** supplied.]

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<sup>4</sup> The rule is set forth here as it existed at the time relevant to this case. It has since been amended.

Where the sufficiency of service is contested, WAC 391-08-120(5) provides that a certificate of service made under subsection (4)(c) of this section shall constitute proof of service. Thus, Reeder was put on notice that she was required to serve counsel for the union and union representatives with any appeal and make a certificate of service that would constitute proof of service in the event sufficiency of service was contested.

Unfair labor practice complainants need not be represented by legal counsel, but a pro se claimant may be treading on unfamiliar ground in presenting a case on his or her own. While leniency towards a pro se litigant is sometimes appropriate, we must also be mindful of statutory requirements and the rights of other parties. Tacoma School District, Decision 5337-B (PECB, 1995). Parties who choose to appear pro se are not thereby excused from compliance with fundamental due process requirements found in the rules duly promulgated by the Commission and published in the Washington Administrative Code. Tacoma School District, supra.

#### Application of Standards

The Commission has dismissed petitions for review in countless cases where both pro se parties and attorneys have failed to process their disputes in accordance with the Commission's rules. See City of Kirkland, Decision 6377-A (PECB, 1998); King County, Decision 5595-A (PECB, 1996); Mason County, Decision 3108-B (PECB, 1991); City of Seattle, Decision 3339-A (PECB, 1990). We find this case should be handled no differently and dismiss the appeal.

We have found waiver of Commission rules to be appropriate in cases where a party's procedural error has resulted from reliance on

erroneous agency advice, or where the rules themselves were not clear on their face and there was substantial compliance with the rule. King County, supra. No such error is claimed here.

The union asserts that it was not served with a copy of the appeal; Reeder argues that she mailed the union a copy of her appeal. In cases such as this, where the sufficiency of service is contested, the party which claims to have served a paper must furnish the Commission with a certificate of service made on the same day that service was completed. See WAC 391-08-120. In this case, the Commission has never received such a certificate of service. Lacking sufficient evidence that the complainant fulfilled her obligation to serve a copy of her notice of appeal, we are unwilling to conclude that service was properly effected. To not require a certificate of service would completely undermine the service requirements of WAC 391-45-350 and the underlying policy of orderly dispute resolution. See Mason County, Decision 3108-B (PECB, 1991).

NOW, THEREFORE, it is

ORDERED

1. The unfair labor practice complaint filed in the above-captioned matter is DISMISSED due to the complainant's failure to comply with the service requirements of WAC 391-45-350 and WAC 391-08-120.
2. The Findings of Fact, Conclusions of Law and Order issued in the above-entitled matter on June 30, 2000, by Examiner Mark

S. Downing shall stand under WAC 391-45-350 as the final order of the agency on the merits of the case.

Issued at Olympia, Washington, the 14th day of November, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARILYN GLENN SAYAN, Chairperson

  
SAM KINVILLE, Commissioner

  
JOSEPH W. DUFFY, Commissioner