

State - Corrections, Decision 8772-A (PSRA, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

EUGENE WELTZER,)	
)	
Complainant,)	CASE 18812-U-04-4780
)	
vs.)	DECISION 8772-A - PSRA
)	
WASHINGTON STATE - CORRECTIONS,)	
)	
Respondent.)	ORDER OF DISMISSAL
)	
_____)	

On September 3, 2004, Eugene Weltzer filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, against the Washington State Department of Corrections, McNeil Island Correction Center (employer). No union was involved as a party to this case. On October 6, 2004, a Preliminary Ruling was issued finding, in part, that claims made in the complaint alleging interference and discrimination violations would be subject to further proceedings.

The employer filed a timely answer, asserting that the complaint should be dismissed for failure to serve a copy on the employer. The case was set for hearing on April 7, 2005, before Examiner Sally B. Carpenter.

ISSUE

Should Weltzer's complaint be dismissed for lack of proof of service on the employer?

APPLICABLE LAW

WAC 391-45-030 states, ". . . The party filing the complaint shall serve a copy on each party named as a respondent, as required by WAC 391-08-120(3) and (4)." The rules for how to show proof of service are contained in WAC 391-09-120. That section requires contemporaneous preparation of a certificate of service, or proof by certified mail receipt or acknowledgment of receipt by the respondent.

Port of Bellingham, Decision 6052 (PECB, 1997) is controlling in this case. There the Commission held that the complainant has the burden of proof to show that service has been made. The Commission went on to hold that the complaint must be dismissed where there is no offer of proof of service, actual evidence of service, or any sufficient reason to proceed without proof of service.

The Commission is consistent in application of this rule. In *Washington State Patrol*, Decision 8709 (2004, PSRA) and again in *Washington State Patrol*, Decision 8773 (2004, PSRA) complaints were dismissed where no service was made on the employer.

DISCUSSION

On January 31, 2005, the employer filed a motion to dismiss for failure to serve the complaint. No affidavit was attached to the motion stating actual lack of receipt of the complaint. Unsworn argument of counsel asserted that the employer received notice of the case filing from the Commission, and requested a copy of the complaint from the agency. WAC 391-45-030(5) requires, "Where sufficiency of service is contested, an acknowledgment of service

. . . or a certificate of service . . . shall constitute proof of service."

On February 4, 2005, a show cause directive was sent to Weltzer's counsel requesting proof of service within two weeks. No response was received. To this date, there is no compliance with WAC 391-45-030(5).

ORDER

The Examiner DISMISSES the complaint filed by Weltzer for failure to provide any proof of service of the complaint on the employer as required by WAC 391-08-120 and WAC 391-45-030.

Issued at Olympia, Washington, the 24th day of March, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



SALLY B. CARPENTER, 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.